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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 270

NATHAN MAYO, AS COMMISSIONER OF AGRICULTURE OF THE STATE OF FLORIDA, ET AL., APPELLANTS,

vs.

LAKELAND HIGHLANDS CANNING CO., INC., THE POLK COMPANY AND ROBERTS BROTHERS, INC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA

FILED AUGUST 7, 1939.

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[fol. 1]

IN UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA, TAMPA DIVISION

#89. Civil T.

LAKELAND HIGHLANDS CANNING CO., INC., a Corporation; The Polk Company, a Corporation; Roberts Brothers, Inc., a Corporation; Florida Grapefruit Canning Co., a Corporation; D. J. Apte and R. W. Apte, doing Business as Apte Brothers Canning Co.; Floridagold Citrus Corporation, a Corporation; Bordo Products Company, a Corporation; Hills Brothers Co. of Florida, a Corporation; Bruce's Juices, Inc., a Corporation; Eckerson Fruit Canners, Inc., a Corporation; Sundine Company, a Corporation; Plaintiffs,

v.

NATHAN MAYO, as Commissioner of Agriculture of the State of Florida, Defendant

COMPLAINT—Filed March 23, 1939

Come now the Plaintiffs and would show unto the Court:

I

(a) That the Lakeland Highlands Canning Co., Inc., is a corporation organized and existing under the laws of the State of Florida, duly authorized and qualified to do business in the State of Florida, and engaged extensively, as more particularly set out hereinafter, in the canning of [fol. 2] citrus products produced and grown in said State; that the principal place of business of said plaintiff is Highlands City, in Polk County, Florida;

(b) That The Polk Company is a corporation organized and existing under the laws of the State of Indiana, duly authorized and qualified to do business in the State of Florida, and engaged extensively, as more particularly set out hereinafter, in the canning of citrus products produced and grown in said State; that the principal place of business of said plaintiff is Polk County, Florida;

(c) That Roberts Brothers, Inc., is a corporation organized and existing under the laws of the State of Maryland, duly authorized and qualified to do business in the State

of Florida, and engaged extensively, as more particularly hereinafter set out, in the canning of citrus products produced and grown in said State; that the principal place of business of said plaintiff for canning citrus products is in Polk County, Florida;

(d) That Florida Grapefruit Canning Co., is a corporation organized and existing under the laws of the State of Florida, duly authorized and qualified to do business in the State of Florida, and engaged extensively, as more particularly set out hereinafter, in the canning of citrus products produced and grown in said State; that the principal place of business of said plaintiff is Manatee County, Florida;

(e) That Apte Brothers Canning Co. is a co-partnership composed of D. J. Apte and R. W. Apte, and engaged extensively, as more particularly set out hereinafter, in the canning of citrus products produced and grown in said State; that the principal place of business of said plaintiff is Hillsborough County, Florida;

(f) That Floridagold Citrus Corporation is a corporation organized and existing under the laws of the State of Florida, and engaged extensively, as more particularly [fol. 3] set out hereinafter, in the canning of citrus products produced and grown in said State; that the principal place of business of said plaintiff is in Polk County, Florida;

(g) That Bordo Products Company is a corporation organized and existing under the laws of the State of Illinois, duly authorized and qualified to do business in the State of Florida, and engaged extensively, as more particularly set out hereinafter, in the canning of citrus products produced and grown in said State; that the principal place of business of said plaintiff is in Polk County, Florida;

(h) That Hills Brothers Co. of Florida is a corporation organized and existing under the laws of the State of Florida, and engaged extensively, as more particularly set out hereinafter, in the canning of citrus products produced and grown in said State; that the principal place of business of said plaintiff is Tampa, Hillsborough County, Florida;

(i) That Bruce's Juices, Inc., is a corporation organized and existing under the laws of the State of Florida, and engaged extensively, as more particularly set out herein-

after, in the canning of citrus products produced and grown in said State; that the principal place of business of said plaintiff is Tampa, Hillsborough County, Florida;

(j) That Eckerson Fruit Canners, Inc., is a corporation organized and existing under the laws of the State of Florida, and engaged extensively, as more particularly set out hereinafter, in the canning of citrus products produced and grown in said State; that the principal place of business of said plaintiff is Sanford, in Seminole County, Florida;

(k) That Sundine Company is a Delaware corporation authorized to do business in the State of Florida, and engaged in the citrus canning business in this District.

[fol. 4]

II

That the Defendant, Nathan Mayo, is Commissioner of Agriculture of the State of Florida, and maintains his principal office in the County of Leon, State of Florida, with representatives within the jurisdiction of this court for the purpose of enforcing the act attacked hereinafter, in this complaint.

III

This cause involves a controversy in excess of $3,000.00, exclusive of interest and costs, and arises under the Constitution of the United States of America.

IV

That during the past decade the canning of grapefruit and grapefruit juice with other citrus has developed into one of the principal industries of the State of Florida. The principal products canned are grapefruit hearts or sections and grapefruit juice, other citrus juices, orange juice and combination juices or grapefruit and orange, and some citrus salad; the grapefruit and grapefruit juice constituting the large majority of the citrus canning industry. During the past seven years the volume of the products canned is as follows:

(Converted into No. 24/2 cans)

	Grapefruit	Grapefruit Juice	Combination Juices
1931-1932	895,962 Cases	235,034 Cases	Cases
1932-1933	2,138,285	722,721	
1933-1934	2,145,499	605,817	
1934-1935	3,539,456	2,175,695	
1935-1936	2,149,610	1,608,287	80,800
1936-1937	3,971,624	3,709,751	265,684
1937-1938	3,419,226	3,370,002	574,329

During this period of time there was also canned approximately 1,500,000 cases of orange juice and 200,000 cases of citrus salad and 500,000 cases of combination juices.

[fol. 5] This industry constitutes an important and valuable outlet for grapefruit in the State of Florida. During the last five years the amount of grapefruit thus utilized was 24,334,804 boxes.

During said five-year period the percentage of grapefruit grown in Florida that has been used in the canning production has steadily increased, as shown by the following table:

	1933-34	1934-35	1935-36	1936-37	1937-38
Percent of production used by the Canners	21.78%	36.51%	32.01%	37.14%	41.44%

Of this total pack plaintiffs herein for the past three years packed the following aggregate amounts and average annual amounts in cases:

Canned Grapefruit Products

Plaintiff	3-year total pack	Annual average pack
Lakeland Highlands Canning Co	980,081	326,693
The Polk Company	2,587,000	862,333
Roberts Brothers, Inc	355,415	118,471
Florida Grapefruit Canning Co	765,241	255,080
Apte Brothers Canning Co	.....	.....
Floridagold Citrus Corp	1,816,427	605,475
Bordo Products Company	1,434,849	478,283
Hills Bros. Co. of Fla	1,209,038	403,012
Bruce's Juices, Inc	618,298	206,099
Eckerson Fruit Canners, Inc	.....	.....
Sundine Company	80,000 (1935-36 season only)	80,000

[fol. 6] Plaintiffs herein have thus packed over the 3-year period far in excess of 60% of the total pack of the canned grapefruit and grapefruit juice in the State of Florida.

Estimated pack for the present season 1938-1939 was that the pack would be far in excess of the pack for any prior season in the history of the State of Florida; however, because of the facts and circumstances hereinafter alleged the pack to date is approximately 2,000,000 cases less up to the time of filing this complaint than was packed during the same period of the season of 1936-1937, which was the largest season up until the present season; even though up to the effective date of the Regulation of the Citrus Commission, to-wit: January 19, 1939, these plaintiffs and all other canners had canned an unusually large volume of products.

IV-A

Plaintiffs would show unto the Court that each of them, since January 10, 1939, has been offered large volumes of grapefruit from many of the growers of the State of Florida at prices ranging from 12 for fruit to be canned into grapefruit juice, to 20¢ to 25¢ per field box for fruit to be canned into sections or hearts; and that each of said plaintiffs, except for the provisions of the said Regulation and said Act, could and would have purchased said grapefruit and canned the same and sold the canned product to the different distributors at a profit far in excess of $3,000.00.

IV-B

Many growers own their own canning plants and have been canning their grapefruit without the burden of the law hereinafter referred to; that many growers have been [fol. 7] canning their grapefruit through cooperative organizations to which the defendant contends the price law does not apply.

That by reason of the foregoing facts canned grapefruit is now being offered for sale at prices which do not net the grower 32¢ per box on the tree.

These plaintiffs allege that because of the foregoing facts the said Growers' Cost Guarantee Law, hereinafter referred to, and the Regulation thereunder, are discriminatory in that it attempts to force these plaintiffs to pay a minimum price for their raw products while permitting others to operate in competition to these plaintiffs unrestrained by the provisions of said Law and Regulation; and unless the relief herein prayed for is granted these plaintiffs will have their property taken without due process of law, and will suffer irreparable damages to each far in excess of $3,000.00.

V

Canned grapefruit and grapefruit juice packed in the State of Florida are widely distributed in interstate commerce and in excess of 99% of all canned grapefruit products canned by the plaintiffs named herein are canned solely for and go into interstate commerce; such products being sold in almost every state in the United States, and in foreign countries.

[fol. 8] Of the canned products of the plaintiffs herein the percentage of their grapefruit and grapefruit juice pack sold in interstate commerce is as follows:

Plaintiff	Sold in interstate commerce	Sold in Florida
Lakeland Highlands Canning Co. Inc.	99½%	½%
The Polk Company	100%	None
Roberts Brothers, Inc.	99%	1%
Florida Grapefruit Canning Co	99½%	½%
Apte Brothers Canning Co	99 3/4%	¼%
Floridagold Citrus Corporation	99.92%	.08%
Bordo Products Company	100%	none
Hills Brothers Co. of Florida	97%	3%
Bruce's Juices, Inc.	99 14/15%	1/15 of 1%
Eckerson Fruit Canners, Inc.	98%	2%
Sundine Company	99.90%	1/10%

The amount of such canned citrus products consumed in the State of Florida is negligible.

During the 1936-1937 season, that is, beginning November 1st, 1936, up to and including October 15, 1937, there [fol. 9] were exported 847,884 cases of canned grapefruit, of which 843,800 cases were shipped to the United Kingdom, and the remaining number of cases were shipped to France, Belgium, Holland, Germany, India, Egypt and South America, and during the same period of time there were exported to the same countries an aggregate of *of* 34,427 cases of grapefruit juice.

VI

The packing season for the canning of citrus products grown in the State of Florida begins about the first of November of each year and reaches volume production in about two weeks, and the canning continues until June or July of the following year. Preparations for canning necessitates the ordering of cans, labels, making contracts for the purchase of fruit, securing labor, the planning of factory operations in general. In addition it is the commercial practice, and frequently financing of the pack requires the packer to secure sales orders for the finished product in advance of or at the opening of the packing season.

VII

During the past six years the canning of citrus products in other areas has largely increased and is now in serious competition with the citrus packed in the State of Florida. During the 1937-1938 season there was produced in the

State of Texas 102,483 cases of grapefruit sections or hearts and 4,344,540 cases of grapefruit juice, and it is estimated that the crop of grapefruit in Texas this season will be approximately 15,000,000 boxes, which is by far the largest crop in the history of the industry in Texas.

[fol. 10] The territory of Puerto Rico has produced approximately 200,000 cases of grapefruit sections each year for the past few years. In addition, production of canned grapefruit in states other than Florida has amounted to approximately 100,000 cases.

The crops in the states other than in the State of Florida, as well as in this State, have continued to grow over a period of years and the canned citrus products produced in states other than the State of Florida actively compete in interstate commerce with the canned citrus products produced in Florida. In addition, canned grapefruit juice competes with other fruit juices, such as tomato juice and pineapple juice, and any impediment upon the ready purchasing of grapefruit juice will cause a shift in consumption to other juices and diminish the volume of production and shipment in interstate commerce from the State of Florida.

Within the last few days canned grapefruit juice produced and canned in the State of Texas has been offered for sale at a price of from 42¢ to 45¢ per doz. f.o.b. Texas in large volumes, and unless the injunction herein prayed for is granted these plaintiffs will be unable to compete with such competition. Plaintiffs are informed and believe and so allege the facts to be that the different companies canning in the State of Texas are now buying grapefruit at a price of 12¢ to 20¢ per field box delivered to the canning plant, which is less than one-half of the minimum price fixed by the regulation.

That over a period of years Florida canned grapefruit has enjoyed such a place in the markets that it could demand a slightly higher price than that canned in Texas and [fol. 11] other places but unless the relief herein prayed for is granted so these plaintiffs will not have to face a "pegged" price, they will be unable to can grapefruit to compete with that canned in Texas and other places, and the canning industry of Florida will suffer an irreparable loss and each of these plaintiffs will thereby suffer damages in excess of $3000.00.

VIII

The plaintiffs and each of them have invested in the State of Florida, in canning factories, receiving stations, and other necessary equipment far in excess of $100,000.00, and that the total of such investments by all of the plaintiffs exceed the sum of $2,000,000.00;

That annually during the citrus packing season in Florida plaintiffs operate their several canning plants and factories, and employ daily in and about the processing, canning, labelling and packing of grapefruit sections and juice approximately 5000 persons, and the weekly pay-roll of the plaintiffs throughout the canning period for the citrus season amounts to approximately $100,000.00 each, and every week of their operation.

IX

That there was grown in the State of Florida during the present season approximately 21,000,000 boxes of grapefruit, which is the largest production in the history of the citrus industry in the State of Florida; that because of the enactment of the statute hereinafter referred to and the regulation promulgated thereunder by the Florida Citrus Commission it has been impossible for these plaintiffs to operate their factories and pay the grower the sum of 32¢ [fol. 12] per field box and that there are approximately 2,000,000 cases less canned in the State of Florida at this time than there were at the corresponding date in the season 1936-1937, which was the heaviest pack up until this season, and that the grapefruit which would have been put in said cans, had the plaintiffs been permitted to operate without the interference of the Act hereinafter set forth, is practically all decayed and rotting because the growers, who did not own a canning plant or belong to a cooperative were unable to sell their fruit.

Many growers in the State of Florida are ready, willing and anxious to dispose of their fruit to the plaintiffs or some of them at whatever price market conditions will warrant, but plaintiffs are unable to purchase said fruit because of the Act hereinafter referred to, and said fruit will be permitted to drop from the trees and to rot and decay in the groves.

X

Plaintiffs only operate their canning plants during the season for packing and canning which is a period of approximately seven months as hereinbefore alleged; that in order to be prepared to operate their plants during said season it is necessary that the plaintiffs keep on an annual pay-roll many employees during the period of time when they are not in operation and that when the plants are not in operation the plaintiffs suffer large expenses and costs in overhead expenses, salaries, administrative expenses, factory personnel, electricity or other power for operating their plants, and taxes. Plaintiffs allege that if this Court [fol. 13] does not grant the injunction herein prayed for they will be unable to operate the remaining portion of this season and the loss to each and every of said plaintiffs will far exceed the sum of $3,000.00 in overhead costs, salaries, etc., as above set forth.

Plaintiffs say that each of them suffer losses in excess of $400.00 per week in pay-roll expenses alone while they are shut down and if the relief prayed for herein is not granted they will be forced to keep their plants closed for the remainder of the season and each thereby suffer loss in excess of $4500.00 for that item of expense alone.

XI

Plaintiffs in their several businesses depend to a large extent on certain distribution channels and that because of the inability of the plaintiffs to operate their plants this season due to the Act and the Regulation hereinafter referred to, the Plaintiffs have been and will be unable to take care of the requirements of their different distributors and dealers throughout the United States and foreign countries; that these distributors and dealers have over a period of years built up good will for the different brands canned and labelled by the plaintiffs and have used merchandising efforts such as advertising and display to increase the consumption of the canned products of these plaintiffs, and to further the good will of said products.

Plaintiffs allege that unless the relief herein prayed for is granted, the plaintiffs will be unable to can their grapefruit and grapefruit juice in accordance with the requirements of their trade and that they and each of them will

[fol. 14] suffer irreparable loss and damage to their trade, good will and trade marks, far in excess of $3,000.00 to each of said plaintiffs; that if over a period of time these plaintiffs are ever able to re-gain the good will for their products that they now enjoy, it would only be at a tremendous cost and expense to these plaintiffs and each of them.

These plaintiffs further allege that grapefruit and grapefruit juice are in competition with many other canned products such as tomato juice and pineapple juice, and that to meet said competition it is necessary that the products be continuously before the public, and that the retail price of same be kept on a competitive base with other products; that if this Court does not grant the relief herein prayed for canned grapefruit and grapefruit juice canned by these plaintiffs will be supplanted by other products because of the inability of these plaintiffs to can grapefruit and grapefruit juice.

If these plaintiffs were able to pay 32¢ per field box to the growers as required by the Act hereinafter referred to, and the Regulation promulgated thereunder, it would be necessary for these plaintiffs to receive for the canned products between 62¢ and 70¢ per doz. for grapefruit juice, and that there is now being quoted in the State of Texas grapefruit juice at 42¢ per doz.; that should these plaintiffs attempt to comply with the Act hereinafter referred to and the Regulation thereunder by paying 32¢ to the grower per field box, they would each suffer a tremendous loss in meeting competition of the Texas juice as quoted above.

[fol. 15] XII

These plaintiffs have been warned by the Commissioner of Agriculture that if they attempt to operate their plants and not pay the grower 32¢ per field box their licenses will be revoked, but these plaintiffs allege that there are several thousand cases of grapefruit and grapefruit juice in the State of Florida at this time which have been canned and are now being canned upon a cooperative basis and there is now being offered on the markets canned grapefruit canned in the State of Florida by some of the cooperative associations at a price of 80¢ per doz., and these plaintiffs allege that when the necessary costs of canning and sales thereof are deducted from the returns on a basis of 80¢ per doz., there is not a sufficient amount left to pay the grower the

sum of 32¢ per field box, and that if the Act hereinafter set forth and the Regulation thereunder are held valid and enforcible then these plaintiffs will be unable to compete with the fruit and fruit juices that are being canned by the cooperative organizations and the large investments of these plaintiffs will be lost, resulting in irreparable damage to each of the plaintiffs in a sum far in excess of $3,000.00.

XIII

That the Legislature of the State of Florida of 1935 enacted Chapter 16862, which is hereinafter referred to as the Growers' Cost Guarantee Act, copy of said Statute being hereto attached, marked Exhibit "A", and by reference made a part of this Complaint.

[fol. 16]

XIV

That the Legislature of the State of Florida of 1937 enacted Chapter 17777 Laws of Florida, hereinafter referred to as the Bond and License Law, a copy of said Act being hereto attached, marked Exhibit "B", and by this reference made a part of this Complaint.

XV

Each of the plaintiffs herein is a canner of citrus fruits and holds a license issued by the Commissioner of Agriculture under the Bond and License Law, and has filed a good and sufficient bond in accordance with such law.

XVI

That under the provisions of the Growers' Cost Guarantee Act during the present season the defendant, Nathan Mayo, as Commissioner of Agriculture, by and with the consent and advice of the Governor of the State of Florida has declared the existence of a state of emergency in the citrus industry, on or about the 13th day of January, 1939.

That the Florida Citrus Commission, on or about the 16th day of January, 1939, passed a certain Resolution, copy of which is hereto attached, marked Exhibit "C", and by this reference made a part of this Complaint.

The said Resolution states that there has been presented to the Florida Citrus Commission petitions signed by persons, firms, corporations and associations, which the Com-

mission finds own or control 50% or more of the producing acreage of citrus fruit and 50% or more of the producing acreage of grapefruit in the State of Florida, requesting the [fol. 17] Commission to determine the average reasonable cost per standard packed box of producing grapefruit, but these plaintiffs allege that the Citrus Commission did not have filed before it at the time of the passage of said Resolution petitions signed by persons, firms or corporations owning 50% or more of the producing acreage of citrus fruit in the State of Florida.

XVII

The said Growers' Cost Guarantee Act provides that the basis for ascertaining whether the petitions were signed by persons, firms or corporations owning or controlling 50% or more of the producing acreage of citrus fruit was to be the survey heretofore made by the Federal Emergency Relief Administration and supplemented by such further survey as the Citrus Commission may from time to time make.

Plaintiffs allege that the determination of the percentage was not based upon any survey made by the Federal Emergency Relief Administration, nor was it supplemented by any survey made by the Florida Citrus Commission, and that therefore the Florida Citrus Commission had no right, authority, power or jurisdiction to issue the Regulation, copy of which is attached hereto as Exhibit "C".

XVIII

The said Growers' Cost Guarantee Act likewise provides that before determining the reasonable cost per standard packed box the Citrus Commission should have from the producers, shippers and handlers of citrus fruit, not subject to the provisions of the Act, binding agreements to conform thereto and abide by its terms. Plaintiffs allege [fol. 18] that at and before the passage of the Resolution, a copy of which is attached hereto as Exhibit "C", the Citrus Commission had procured no agreements whatsoever from producers, shippers or handlers of fruit, not subject to the provisions of the Act, and therefore the Florida Citrus Commission had no power, authority or jurisdiction to issue the said Regulation, copy of which is hereto attached as Exhibit "C".

XIX

Plaintiffs further allege that the 32¢ price for grapefruit determined by the Florida Citrus Commission in its Resolution dated January 16, 1939, copy of which is attached hereto as Exhibit "C", is arbitrary, capricious, unreasonable, unfair, inequitable and confiscatory and constitutes a denial of property rights of these plaintiffs without due process of law; that said price was not properly determined by the Florida Citrus Commission, as required by the Growers' Cost Guarantee Act, but was adopted as the result of experiments on certain isolated groves by certain persons who were not members of the Florida Citrus Commission, and that the said price is not the actual cost of production nor an average reasonable cost per standard packed box of grapefruit throughout the State of Florida;

That among other things, the said 32¢ basis includes 9.8¢, considered by the Commission to represent interest on investment by the grower.

[fol. 19]

XX

Plaintiffs further allege that Eckerson Fruit Canners, Inc., one of the plaintiffs herein, heretofore obtained a temporary injunction from the Circuit Court of Seminole County, Florida, in a suit wherein the Commissioner of Agriculture claimed that the said plaintiff was violating the Growers' Cost Guarantee Act by operating its factory under a certain contract with the growers, whereby the said plaintiff was canning grapefruit for the account of the growers and charging the growers for the cost of canning; that the said cause was appealed to the Supreme Court of Florida, which Court on March 17, 1939, rendered its opinion holding that said contract did violate the provisions of the said Growers' Cost Guarantee Law, but in said cause the said Supreme Court of Florida did not consider the constitutional validity of the Growers' Cost Guarantee Law.

That for a period of approximately fourteen days these plaintiffs, or a majority of them, have been attempting to operate their plants under contracts somewhat similar to the said contract of the plaintiff, Eckerson Fruit Canners, Inc., but that since the decision above referred to, rendered by the Supreme Court of Florida, the defendant, Commissioner of Agriculture, has threatened to revoke the license of each and every of these plaintiffs if they continue to

operate under such contracts and these plaintiffs believe and so allege that the said Commissioner will revoke their licenses unless enjoined by this Honorable Court.

XX-A

Plaintiffs say that in excess of 99% of their finished canned products have gone and do go directly into inter-
[fol. 20] state commerce and are shipped to the several States of the United States as well as to foreign countries, and that the enforcement of the Act will violate Article I, Section 8 (3) of the Constitution of the United States, as it imposes a burden on and directly interferes with interstate commerce.

If said law and the Regulation thereunder are held valid then these plaintiffs will be unable to operate their plants, and can grapefruit and grapefruit juice, and the flow of their canned grapefruit and grapefruit juice by these plaintiffs into interstate commerce will be completely stopped.

The effect of said Act will be to attempt to fix the sale prices of grapefruit and grapefruit juice canned in the State of Florida wherever the sales may be made in the United States or in foreign countries, although grapefruit and grapefruit juice canned in the State of Florida under the provisions of said Act and the Regulation thereunder must compete in the open market with grapefruit and grapefruit juice canned in other states.

XXI

The Growers' Cost Guarantee Act is unreasonable, arbitrary and vague.

The said Act is so vague and indefinite that the true intent and purpose of the Act cannot be ascertained therefrom:

(a) the said Act provides that "petitions must be signed by persons, firms, corporations, owning or *controlling* 50% or more of the producing acreage of citrus fruit" but the word "control" is not defined in any manner in said Act, [fol. 21] and because of the many applications of said word and the varying definitions thereof the Act is vague and indefinite as to the intention of the Legislature as to whom should sign said petitions.

(b) The Act further provides that "the Citrus Commission shall have procured from the producers, shippers, or

handlers of citrus fruit, *not subject to the provisions* of this Act, binding agreements to conform thereto and abide by its terms" before the Citrus Commission shall determine the cost to the grower.

The Statute does not define which producers, shippers or handlers of citrus fruit are subject or not subject to the provisions of the Act.

Handlers of citrus fruit, who transact their business outside the State of Florida are certainly not subject to the provisions of said Act, and could not even be known to the Citrus Commission, and it would be impossible for the Citrus Commission to procure agreements from all the handlers of citrus fruit; therefore, the provisions of the said Act could not be put into force and effect by the said Florida Citrus Commission.

XXII

The Act is further vague, indefinite, uncertain and contrary in that it provides that every contract, agreement, plan or arrangement "* * * shall be held to require that the person, firm, corporation or association buying, marketing or processing said citrus fruit shall in any event pay the grower said cost of production" but provides no penalties whatsoever for violation of said quoted provision, [fol. 22] nor provides any means or method of enforcing the same whatsoever.

The Act likewise provides that "any contract, plan, scheme or device whereby it shall be attempted to preclude the grower from recovering such cost of production * * * shall" be unlawful and against public policy to that extent but further provides "but in all other respects and particulars contracts of sale, marketing and processing shall be valid and binding", so that the entire Act is so vague, indefinite and uncertain that it is impossible to tell who or what transactions are subject to the provisions thereof.

XXIII

The defendant contends that under the Bond and License Act, copy of which is attached hereto as Exhibit "B", he has the power to and will revoke the licenses of these plaintiffs, and each of them if they do not pay 32¢ to the grower for each field box of grapefruit received by them for canning purposes.

These plaintiffs allege that the defendant, Commissioner of Agriculture, is without authority whatsoever to revoke the licenses of these plaintiffs or either of them for their failure to comply with the provisions of the Growers' Cost Guarantee Act or the Regulation promulgated thereunder, but that unless restrained by this Honorable Court the said Commissioner will illegally and improperly and without any authority whatsoever, revoke the licenses of these plaintiffs and each of them, and that thereupon the plaintiffs will be forced to stop their businesses or be subject to the heavy fine and imprisonment under Section 13 of the Bond and License Act.

[fol. 23]

XXIV

That unless restrained by this Court, defendant will revoke the license of each of these plaintiffs and will thereby deprive these plaintiffs, and each of them, of their property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States.

That if the licenses of these plaintiffs are revoked their right to transact their lawful business in the State of Florida will be taken from them, and their property will be further taken in the loss and irreparable damage caused by the revocation of their said licenses.

XXV

Plaintiff, Florida Grapefruit Canning Company further shows unto the Court that prior to the promulgation of the Regulation by the Citrus Commission, copy of which is attached hereto as Exhibit "C", it had entered into binding contracts with growers of grapefruit in the State of Florida, whereby the growers of grapefruit agreed to furnish to said plaintiff approximately 60,000 field boxes of grapefruit at a price less than 32 cents per field box; that said plaintiff likewise had contracts of sale whereby plaintiff agreed to sell canned grapefruit and grapefruit juice at a price that would have netted to said plaintiff a profit in excess of $3,000.00 over and above the cost of said fruit under the contracts above referred to, and all additional costs in connection with the processing, canning and shipping thereof.

This plaintiff alleges that by the promulgation of said Regulation it has been unable to accept said 60,000 boxes

of grapefruit at the price set forth in said contract, and that it is unable to pay 32¢ a box for grapefruit and process the same, and sell it to the consumer under his contract to said consumer; therefore the said Statute and the promulgation of said Regulation thereunder, have impaired the [fol. 24] obligation of his contracts in violation of Article I, Section 10 of the Constitution of the United States.

Wherefore, the premises being considered, the plaintiffs pray:

First. That this Court take jurisdiction of this cause and of the parties hereto.

Second. That process of this Court be issued to the Defendant, Nathan Mayo, as Commissioner of Agriculture of the State of Florida, under the rules of this Court, requiring the said Defendant to answer this Complaint.

Third. That this Court do grant to the Plaintiffs a temporary restraining order against the said Nathan Mayo, as Commissioner of Agriculture, his successor or successors, assistants, deputies, agent or agents, attorneys, servants, inspectors, employees or other representatives from suspending, revoking or cancelling the licenses of the plaintiffs and each of them, as citrus fruit dealers, and from enforcing or attempting to enforce in any manner or form whatsoever the said Regulation of the said Florida Citrus Commission, dated January 16, 1939, and Chapter 16862 Laws of Florida, 1935, being the Growers' Cost Guarantee Act, or in any manner molesting or interfering with the plaintiffs in the operation of their several canning plants and factories because of their failure to comply with the Regulation of the said Citrus Commission and said Chapter 16862 Laws of Florida, 1935.

Fourth. That after issuance of said temporary restraining order this Court do convene a Three-Judge Court, and after notice of hearing that said Three-Judge Court enter a temporary injunction to the same effect as said restrain- [fol. 25] ing order.

Fifth. That upon final hearing the said Three-Judge Court enter a final order and decree making said injunction permanent.

And for such other and further relief as to the Court shall seem meet.

Knight, Thompson & Sutton, by G. L. Reeves, Attorneys for All Plaintiffs. G. L. Reeves, Of Counsel, Tampa, Florida.

[fol. 26] *Duly sworn to by J. Adams Bruce. Jurat omitted in printing.*

[fol. 27] EXHIBIT "A" TO COMPLAINT

Growers' Cost Guarantee Law

Chapter No. 16862

Laws of Florida—Acts of 1935

An Act relating to citrus fruit: Prescribing conditions and limitations upon the sale, marketing and processing agreements.

Whereas, it is found by the Legislature and hereby declared that the production and distribution of citrus fruit is a paramount industry in Florida upon which the prosperity of the State in a large measure depends; that such fruit and the juices thereof have become and are generally used in great and rapidly increasing quantities, both voluntarily and upon advice of physicians, by people of all classes, ages and conditions; that it is necessary for the reasonable comfort, welfare, and health of the people and in order to build up their strength and vigor that an adequate and dependable supply of high grade citrus fruit be constantly available, and the production, transportation, processing, distribution and sale of citrus fruit in the State of Florida is therefore hereby declared to be a business affecting the public health and interest, that unfair, unjust, destructive, demoralizing, and uneconomic trade practices have been and are continuing to be carried on in the sale and distribution of citrus fruit in this state to the extent that such fruit has been and is continuing to sell in many cases at prices below the cost of production and the constant, dependable and adequate supply of such fruit for sale and consumption is thereby so seriously imperiled as to threaten the break down of the industry; that the present acute economic condition in Florida is in part the con-

sequence of a severe and increasing disparity between the prices of citrus fruit and other commodities; that it is both [fol. 28] expedient and necessary to build up the quality and reputation of Florida's citrus fruit in the market and to stabilize the Florida citrus industry and to protect the public and the growers against fraud, deception, and financial loss through further continuation of unscrupulous practices and haphazard methods in connection with the marketing of citrus fruits, and to that end, to assure the grower returns at least equal to the cost of production of high grade citrus fruit.

Therefore, in the exercise of the police power of the State for the purpose of protecting and promoting the public health and general welfare,

Be It Enacted by the Legislature of the State of Florida:

Section 1. This Act shall be known and called the Growers Cost Guarantee Act.

Section 2. The term "Citrus Fruit" as used herein means and includes only the fruits Citrus Grandis, Osbeck, commonly called grapefruit, and Citrus Sinensis, Osbeck, commonly called oranges, and Citrus Nobilis Deliciosa, commonly called tangerines, grown in the State of Florida.

The term "standard packed box" means 1⅗ bushels whether in bulk or in a container.

Section 3. The Commissioner of Agriculture in his discretion and by and with the consent and advice of the Governor shall have the power to declare the existence of a State Emergency in the Citrus Industry, and upon petition or petitions signed by persons, firms, corporations, or associations, owning or controlling 50% or more of the producing acreage of citrus fruit, requesting such action, being filed with the Citrus Commission, such percentage to be based upon the survey heretofore made by the Federal Emergency Relief Administration and supplemented by such further surveys as the Citrus Commission from time [fol. 29] to time may make, and after the Citrus Commission shall have procured from the producers, shippers, or handlers of citrus fruit, not subject to the provisions of this Act, binding agreements to conform thereto and abide by its terms, the Florida Citrus Commission shall determine and record in permanent form annually the average reasonable cost per standard packed box of producing

citrus fruit and every contract, agreement, plan or arrangement with the grower by or under which his citrus fruit shall be bought, marketed, or processed shall be held to require that the person, firm corporation, or association buying, marketing or processing said citrus fruit shall in any event pay the grower said cost of production, to be ascertained by multiplying the said cost per standard packed box as shown by the record of the Commission current at the time the contract, agreement, plan of arrangement with the grower shall be made, by the number of packed boxes so bought, marketed and processed during the season or under the particular contract, agreement, plan or arrangement if for less than a marketing season. Any contract, plan, scheme or device whereby it shall be attempted to preclude the grower from recovering such cost of production shall to that extent be held to be unlawful and against the public policy of this State, but in all other respects and particulars contracts of sale, marketing and processing shall be valid and binding and the terms thereof shall measure the rights of the respective parties.

Section 4. The provisions of this Act shall apply to any one or more of the citrus varieties embraced hereunder as may be determined by the petitions and agreements provided for in the foregoing section.

Section 5. This Act shall become effective immediately upon becoming a law.

Approved June 8, 1935.
Filed in Office Secretary of State June 8, 1935.

[fol. 30] EXHIBIT "B" TO COMPLAINT

Bond and License Act

Chapter No. 16860, Laws of Florida—Acts of 1935
As Amended by Chapter No. 17777, Acts of 1937

An Act Relating to the purchase, handling, sale and accounting of citrus fruit grown in the State of Florida; to prevent fraud and deception therein; to provide for the licensing and bonding of citrus fruit dealers; to prescribe certain powers and duties of the Commissioner of Agri-

culture of the State of Florida in the administration and enforcement of this act; and to prescribe penalties for the violations of the provisions of this Act.

Be It Enacted by the Legislature of the State of Florida:

Section 1. That as used in this Act:

(a) The term "person" means and includes individuals, firms, partnership, association, corporation, and any other business unit.

(b) The term "citrus fruit" means and includes only the fruit Citrus Grandis, Osbeck, commonly called grapefruit, and/or Citrus Sinensis, Osbeck, commonly called Oranges, and/or Citrus Nobilis Deliciosa, commonly called tangerines, grown in the State of Florida.

(c) The term producer means and includes any person engaged in the business of growing and/or producing citrus fruit.

(d) The term "consignor" means and includes any person other than a producer who ships or delivers to any commission merchant, or dealer any citrus fruit for handling, sale or resale.

(e) The term "commission merchant" means and includes any person engaged in the business of receiving any citrus fruit for sale, on commission or for or on behalf of another.

(f) The term "consignment shipper" means and includes any person who contracts with the producer of citrus fruit for the marketing thereof for the sole account and risk of [fol. 31] such producer and who agrees to pay such a producer the net proceeds derived from such sale.

(g) The term "cash buyer" means and includes any person who purchases any citrus fruit in Florida from the producer thereof for the purpose of resale.

(h) The term "broker" means and includes any person engaged in the business of negotiating the sale or purchase of any citrus fruit.

(i) The term "agent" means and includes any person, who on behalf of any one citrus fruit dealer, negotiates the consignment or purchase of any citrus fruit.

(j) The term "dealer" means and includes every person other than a producer, consignor, commission merchant, consignment shipper, cash buyer, broker, or agent who in any manner makes or attempts to make money or any other thing of value on any citrus fruit by dealing in the same in any manner whatsoever.

(k) The term "citrus fruit dealer" means and includes every consignor, commission merchant, consignment shipper, cash buyer, broker, agent association, cooperative association, and dealer, as hereinabove defined.

(l) The term "Commissioner" means the Commissioner of Agriculture of the State of Florida.

(m) The term "standard packed box" means one and three-fifths (1⅗) bushels of citrus fruit whether in bulk or in container.

(n) *The term "shipping season" means and includes that period of time commencing July 1 of one year and ending June 30 of the following year.*

Note: The italic portion did not appear in the 1935 Act.

Section 2. That no person shall act as a citrus fruit dealer without having obtained a license as provided in this Act. That any person desiring to engage in the business of citrus fruit dealer in the State of Florida shall make application to the Commissioner for a license. The Commissioner may by regulation prescribe the information to be contained in [fol. 32] such application. Upon the filing of the application, and annually thereafter, the applicant shall pay to the Commissioner a fee of Ten Dollars except that where any applicant expects to deal only as an agent, as defined herein, such applicant shall pay the sum of Five Dollars. All such license fees collected hereunder shall be paid by the Commissioner into the State Treasury monthly to the Credit of the General Inspection Fund. Said fees shall be kept in said General Inspection Fund and are hereby appropriated and made available for defraying the expenses incurred in the administration and enforcement of this Act.

Note: The following paragraph appeared at the end of Section 2 in the 1935 Act.

"In cases where a sale of citrus fruit is made direct to a purchaser for cash paid at the time of sale, no license shall

be required but any agent of the Commissioner shall, if the citrus fruit has been properly inspected, graded and labeled as required by law, issue a certificate to the purchaser reciting that the fruit has been inspected and all requirements of law complied with and that the fruit has been paid for and such certificate shall be accepted in lieu of a license by all agents and employees of the Commissioner. No fee shall be charged for such Certificate."

Section 3. That before any license is granted by the Commission to any person other than an agent as defined in this Act, the applicant therefor must deliver to the Commissioner a good and sufficient cash bond or surety bond executed by the applicant as principal and by a surety company qualified and authorized to do business in this State as surety, in the amount of Ten Dollars for each one thousand standard packed boxes of citrus fruit that the said applicant intends to deal with during the next twelve months, as set forth in his application up to and including one million standard packed boxes of citrus fruit; provided, however, that no bond shall be less than Five Hundred Dollars in amount nor greater than Ten Thousand Dollars in amount. Said bond shall be in the form approved by the Commissioner and shall be conditioned upon compliance with the provisions of this Act, and upon faithful compliance with the conditions of all contracts, verbal or written, made by [fol. 33] the citrus fruit dealer with producers relative to the purchase, handling, sale and accounting of sales of citrus fruit and upon applicant accounting for the proceeds of any citrus fruit contracted for in accordance with the terms of the contracts with producers. Said bond shall be to the Commissioner and his successors in office, in favor of every producer with whom applicant deals in the purchase, handling, sale and accounting of sales of citrus fruit. The aggregate accumulated liability under any such bond shall not exceed the amount named therein. Every such bond shall continue in force and effect until ninety days after the termination of the shipping season for which the bond is given. Any producer claiming to be injured or damaged by any act of said citrus fruit dealer, or the Commissioner on behalf of all producers contracting with the said citrus fruit dealer, *amy* maintain an action on said bond against the citrus fruit dealer and the surety named in said bond, or either of them, and any judgment against the citrus fruit

dealer, and/or surety in any such action shall include costs.

In cases where liability under and by virtue of any bond given pursuant to the provisions hereof is admitted, without suit, and the amount or amounts admitted to be due are paid to the Commissioner, the Commissioner is authorized and directed to ascertain the amount or amounts due the claimant or claimants who has or have duly filed a claim or claims under and in connection with such bond prior to the expiration of ninety days immediately following the end of the shipping season for which such bond was given, and thereafter the Commissioner shall make distribution of the amount or amounts so paid to him under such bond to the extent that the same may reach in satisfying such claim or claims; provided, however, that where there are two or more claimants who have duly filed claims within the time last aforesaid that aggregate an amount in excess of the amount or amounts held by the Commissioner for distribution, such claimants shall participate in the proceeds of such funds in [fol. 34] the hands of the Commissioner only on a pro rata basis, and no one of such claimants shall receive any preference over the others by reason of having filed his claim prior to the filing of the claims of the others.

Note: In the 1935 Act, Section 3 read as follows:

"Section 3. That before any license is granted by the Commissioner, the applicant therefor must deliver to the Commissioner a good and sufficient cash bond or surety bond executed by the applicant as principal and by a surety company qualified and authorized to do business in this State as surety, in the amount of Ten Dollars for each one thousand standard packed boxes of citrus fruit that the said applicant intends to deal with during the next twelve months, as set forth in his application, up to and including five hundred thousand standard packed boxes of citrus fruit; provided however, that no bond shall be less than One Hundred Dollars in amount nor greater than Five Thousand Dollars in amount. Said bond shall be in the form approved by the Commissioner and shall be conditioned upon compliance with the provisions of this Act and upon faithful compliance with the conditions of all contracts, verbal or written, made by the citrus fruit dealer with producers and/or any person contracting with the citrus fruit dealer relative to the purchase, handling, sale and accounting of sales of citrus fruit and upon applicant accounting for the proceeds of any citrus

fruit contracted for in accordance with the terms of the contracts with producers. Said bond shall be to the Governor of the State of Florida and his successors in office, in favor of every person with whom applicant deals in the purchase, handling, sale and accounting of sales of citrus fruit. The aggregate accumulated liability under any such bond shall not exceed the amount named therein. Every such bond shall continue in force and effect until notice of the termination thereof is given by registered mail to the Commissioner, and every such bond shall set forth such fact. Any person or producer claiming to be injured or damaged by any act of said citrus fruit dealer, or the Commissioner on behalf of all producers and/or persons contracting with the said citrus fruit dealer may maintain an action on said bond against the citrus fruit dealer and the surety named in said bond, or either of them, and any judgment against the citrus fruit dealer and/or surety in any such action shall include costs. No bond shall be required of any purchaser who pays cash for the fruit which he buys at the time of the sale."

Section 4. That it shall be unlawful in, or in connection with, any transaction relative to the purchase, sale and accounting of sale and handling of citrus fruit:

1. For any citrus dealer to make or exact any fraudulent [fol. 35] charge to and/or from any person.

2. For any citrus dealer to reject or fail to deliver in accordance with terms of the contract without reasonable cause any citrus fruit bought or sold or contracted to be bought or sold by such citrus fruit dealer.

3. For any citrus fruit dealer to discard, dump or destroy without reasonable cause any citrus fruit received by such citrus fruit dealer.

4. For any citrus fruit dealer to make, for a fraudulent purpose any false or misleading statement concerning the condition, quality, quantity, or disposition of or the condition of the market for, any citrus fruit which is received by such citrus fruit dealer or bought or sold or contracted to be bought or sold by such citrus fruit dealer; or the purchase or sale of which is negotiated by such citrus fruit dealer; or to fail or refuse truly and correctly to account promptly in respect of any such transaction in any such

citrus fruit to the person with whom such transaction is had.

5. *For any citrus fruit dealer to knowingly buy, sell, receive, process or handle stolen citrus fruit.*

Note: The italicized portion did not appear in the 1935 Act.

Section 5. Whenever an applicant has paid the prescribed fee, the Commissioner shall issue to such applicant a license which shall entitle the licensee to do business as a citrus fruit dealer unless and until it is suspended or revoked by the Commissioner in accordance with the provisions of this Act but said license shall automatically terminate unless the annual fee is paid within thirty days after notice has been mailed that payment is due.

Section 6. That if any citrus fruit dealer violates any provisions of this Act he shall be liable to the person or persons injured thereby for the full amount of damages sustained [fol. 36] in consequence of such violation. Such liability may be enforced either (1) by complaint to the Commissioner, as hereinafter provided, or (2) by suit in any Court of competent jurisdiction; but this Section shall not in any way abridge or alter the remedies now existing at common law or by statute, and the provisions of this Act are in addition to such remedies.

Section 7. *That any person complaining of any violation of any* of any *of the provisions of this Act by any citrus fruit dealer during any shipping season may at any time prior to the expiration of ninety days immediately following the end of such shipping season* apply to the Commissioner by petition, which shall briefly state the facts, whereupon, if in the opinion of the Commissioner the facts therein contained warrant such action, a copy of the complaint thus made shall be forwarded by the Commissioner to the citrus fruit dealer, who shall be called upon to satisfy the complaint or to answer it in writing within a reasonable time to be prescribed by the Commissioner. After an opportunity for hearing on a complaint the Commissioner shall determine whether or not the citrus fruit dealer has violated any of the provisions of the Act. If after hearing on a complaint made by any person under this Section the Commissioner determines that the citrus dealer has violated any provision of this Act, he shall, unless the offender has al-

ready made reparation to the person complaining, determine the amount of damage, if any, to which such person is entitled as a result of such violation and shall make an order directing the offender to pay to such person complaining such amount on or before the date fixed in the order. If any citrus fruit dealer does not comply with an order for the payment of money within the time limited in such order, the complainant or any person for whose benefit such order was made, may, *within ninety days* from the date of the order file in any Court of competent jurisdiction [fol. 37] a petition or declaration setting forth briefly the causes for which he claims damages and the order of the Commissioner in the premises. Such suit in such Court shall proceed in all respects like other civil suits for damages, except that the findings and order of the Commissioner shall be prima facie evidence of the facts therein stated, and the petitioner or plaintiff shall not be liable for costs in such Court nor for costs in any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner or plaintiff finally prevails he shall be allowed a reasonable attorney's fee to be taxed and collected as a part of the costs of the suit.

Note: This italicized portion read as follows in the 1935 Act:

"That any person complaining of any violation of any provisions of this Act by any citrus fruit dealer may at any time within nine months after the cause of action accrues apply to the Commissioner by petition, which, etc."

Note: This italicized portion reads as follows in the 1935 Act:

"• • • within one year • • • etc."

Section 8. That whenever the Commissioner determines that any citrus fruit dealer violated any of the provisions of this Act or has violated any of the provisions of any other law of the State of Florida governing and applicable to citrus fruit dealers as herein defined, he may publish the facts and circumstances of such violation and/or by order, suspend the license of such offender for a specific period, or revoke the same or make such other appropriate order as he may deem just and proper, and any such order shall specify the effective date thereof and any order other than

one suspending or revoking a license shall automatically suspend such license until said order is complied with. That any action of the Commissioner with reference to the revocation or suspension of any license granted under the provisions of this Act, may be reviewed by any Court of competent jurisdiction.

[fol. 38] Section 9. That every citrus dealer shall make and keep a correct record showing in detail the following with reference to the purchase, handling, sale and accounting of sale of citrus fruit handled by him, namely:

(a) *The name and address of the producers or other persons from whom the citrus fruit was produced, and if same was procured from some other than a licensed handler, the name and address of the producer of said fruit.*

Note: The italicized portion read as follows in the 1935 Act:

(a) The name and address of the producers.

(b) The date citrus fruit is received and the amount thereof, and the purchase price paid therefor if purchased for the purpose of resale.

(c) The condition of such citrus fruit upon receipt by the citrus fruit dealer.

(d) If the citrus fruit is handled on consignment for the account of the producer, the date of sale and the selling price.

(e) An itemized statement of the charges to be paid by the producer in connection with any sale.

(f) A detailed statement of all claims made by producers against the citrus fruit dealer, a copy of each when received to be certified to and filed with the Commissioner.

(g) A copy of the record and account of sales of citrus fruit handled on consignment and/or commission shall be delivered to the producer upon the consummation of the sale, together with all moneys received by the citrus fruit dealer in payment for such transaction made upon account of the producer, less the agreed commission and other charges which must be separately itemized, and payment and accounting must be made by said citrus fruit dealer to the producer within fifteen days after said citrus fruit

[fol. 39] dealer received the money in payment of said citrus fruit unless otherwise specified in contract between citrus fruit dealers and *producer*.

Note: The word "producer", italicized above, read "grower" in the 1935 Act.

Section 10. That in the investigation of complaints under this Act the Commissioner, or his duly authorized agents, shall have the right to inspect such accounts, records, and memoranda of any citrus fruit dealer as may be required for the determinayion of any such complaint. If any such citrus fruit dealer refuses to permit such inspection, the Commissioner may publish the facts and circumstances and/or by order suspend the license of the offender until permission to make such inspection is given.

Section 11. That the Commissioner, or any officer or employee designated by him for such purpose, may hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, receive evidence and require by subpoena the attendance and testimony of witnesses and the production of such accounts, records and memoranda as may be material for the determination of any complaint under this Act. In case of disobedience to a subpoena of the Commissioner, or any of his officers or employees, may invoke the aid of any Court of competent jurisdiction in requiring the attendance and testimony of witnesses and the production of accounts, records and memoranda and any such Court may in case of contumacy or refusal to obey a subpoena issued to any person, issue an order requiring the person to appear before the Commissioner, or his agents or employee or to produce accounts, records, and memoranda as so ordered, or to give evidence touching any matter pertinent to any complaint and any failure to obey such order of the Court shall be punished by the Court as a contempt thereof.

Section 12. That the commissioner may make such rules, regulations and orders as may be necessary to carry out the provisions of this Act and may cooperate with any [fol. 40] department or agency of the United States Government.

Section 13. That any person who acts as a citrus fruit dealer as defined in this Act without a license, or having a license, violates or aids in the violations of any provision.

of this Act, or any person who represents himself as a citrus fruit dealer but who is not a citrus fruit dealer as defined in this Act, shall for each and every offense be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not exceeding $1000.00 or by imprisonment in the county jail for — more than six months or by both such fine and imprisonment in the discretion of the Court. Civil suits and criminal prosecutions arising by virtue of any of the provisions of this Act may be instituted in the County where the said citrus fruit was received by the citrus fruit dealer, or in the County in which the principal place of business of such citrus fruit dealer is located within the State of Florida, or within the County in which the violation of this Act occurred, or if such violation occurs in more than one county, then within any county in which such violation of this Act occurred.

Section 14. That the several Circuit Courts of the State of Florida, sitting in Chancery, are hereby vested with jurisdiction specifically to enforce and to enjoin and restrain any citrus fruit dealer from violating, the provisions of this Act, or of any rule, regulation or order made by the Commissioner pursuant to this Act in any proceeding brought by the Commissioner in any of said Circuit Courts; and in any such proceeding it shall not be necessary for the Commissioner to allege or prove that an adequate remedy at law does not exist.

Note: The above Section did not appear in the 1935 Act.

Section 15. That it shall be the duty of each state and/or county law enforcement officer to make arrests for violation of this Act when notified of such violation by the Commissioner of Agriculture, or his authorized agent, inspector or representative.

[fol. 41] Section 16. That this act shall be liberally construed and if any part or portion thereof be declared invalid, or the application thereof to any person, circumstance or thing is declared invalid, the validity of the remainder of this Act and/or the application thereof to any other person, circumstance or thing shall not be affected thereby and it is the intention of the Legislature to preserve any and all parts of said Act if possible.

Section 17. That all laws or parts of laws in conflict herewith and the same are hereby repealed.

Section 18. That this Act shall take effect immediately upon its passage and approval by the Governor, or upon becoming a law without such approval.

[fol. 42] EXHIBIT "C" TO COMPLAINT

Resolution & Order

Whereas, Honorable Nathan Mayo, Commissioner of Agriculture of the State of Florida, by and with the consent and advice of Honorable Fred P. Cone, Governor of the State of Florida, has by proclamation dated the 13th day of January, A. D. 1939, declared the existence of a State emergency in the citrus industry, under authority of Chapter 16862, Laws of Florida, Acts of 1935, known as the Grower's Cost Guarantee Law; and

Whereas, petitions signed by persons, firms, corporations and associations, which this Commission finds own or control 50% or more of the producing acreage of citrus fruit and 50% or more of the producing acreage of grapefruit in the State of Florida, have been presented requesting the Florida Citrus Commission to determine and record in permanent form the average reasonable cost per standard packed box of producing grapefruit; and

Whereas, the Florida Citrus Commission has determined that all citrus fruit dealers handling grapefruit now being grown in the State of Florida are subject to the provisions of said act; and,

Whereas, the Florida Citrus Commission, based upon said proclamation of the Commissioner of Agriculture and the Governor of Florida, and upon said petitions, having proceeded as authorized and required by said Chapter 16862, Laws of Florida, Acts of 1935, hereby determines and records in permanent form the average reasonable cost per standard packed box of producing grapefruit to be thirty-two (32¢) cents for the citrus fruit season 1938-39;

Now, Therefore, the Florida Citrus Commission does hereby find, determine and order that the average reasonable cost per standard packed box of producing grapefruit

is thirty-two (32¢) cents and that said price be recorded in permanent form for the season 1938-39 and that every contract, agreement, plan or arrangement with the grower by or under which his grapefruit shall be bought, marketed or processed shall be held to require that the person, firm, corporation or association buying, marketing or processing said grapefruit shall in any event pay the grower said cost of production as herein ordered and as provided in Chapter 16862, Laws of Florida, Acts of 1935.

The foregoing resolution and order are unanimously adopted and promulgated by the Florida Citrus Commission in open meeting duly assembled in Lakeland, Florida, on this the 16th day of January, A. D., 1939, and shall become effective at 12:01 a. m. Friday, January 20th, A. D., 1939.

Florida Citrus Commission, By John Maxcy, Chairman.

Attest: Chas F. Chastain, Secretary. (Seal.)

[fol. 43] IN UNITED STATES DISTRICT COURT

TEMPORARY RESTRAINING ORDER—Filed March 23, 1939

In the above entitled cause there having been filed a verified bill of complaint for injunction and likewise praying for restraining order and temporary injunction, and it appearing from said sworn complaint that there is danger of immediate and irreparable damage being caused to the plaintiffs unless defendant is, pending a hearing for temporary injunction, restrained as herein set forth, and the Court being fully advised in the premises it is

Thereupon Considered, Ordered and Decreed that you, Nathan Mayo, as Commissioner of Agriculture of the State of Florida, until further order of this Court, be and you and your assistants, deputies, agents, attorneys, servants, inspectors, employees or other representatives, are hereby temporarily restrained and enjoined from suspending, revoking or cancelling the licenses of the plaintiffs, or any or either of them, as citrus fruit dealers under the Bond and License Law of the State of Florida, and from enforcing [fol. 44] or attempting to enforce in any manner or form whatsoever the resolution or Regulation of the Florida Citrus Commission, dated January 16, 1939, as well as Chapter 16862 Laws of Florida, 1935, known as the Growers'

Cost Guarantee Act, or in any manner molesting or interfering with the plaintiffs or either of them in the operation of their several canning plants and factories because of the failure of said plaintiffs or either of them to comply with said Regulation or said Chapter 16862 Laws of Florida, 1935.

It is Further Ordered that the plaintiffs or one or more of said plaintiffs file a bond herein in the amount of $5,000.00, conditioned as required by law.

It is Further Ordered that a copy of this restraining order be served upon the defendant, Nathan Mayo, as Commissioner of Agriculture of the State of Florida.

Done and Ordered this 23rd day of March, A. D. 1939.

Alexander Akerman, District Judge.

Service of copy hereof on behalf of defendant, Nathan Mayo, as Commissioner of Agriculture of the State of Florida, accepted this 23rd day of March, 1939, at 5:45 P. M.

Wm. C. Pierce, of Counsel.

INJUNCTION BOND

On the 24th day of March, 1939, Injunction Bond in the sum of $5,000.00 was filed and the same was approved as required by law.

IN UNITED STATES DISTRICT COURT

NOTICE OF APPLICATION FOR TEMPORARY INJUNCTION—Filed April 10, 1939

[fol. 45] To: The Honorable Fred P. Cone, Governor of the State of Florida, Tallahassee, Florida; The Honorable George Couper Gibbs, Attorney-General of the State of Florida, Tallahassee, Florida; The Honorable Nathan Mayo, as Commissioner of Agriculture of the State of Florida, Tallahassee, Fla.; Wm. C. Pierce, Esq., Attorney for said Honorable Nathan Mayo, Tampa, Florida; The Florida Citrus Commission, Intervenor; E. Glenn Grimes, Esq., Attorney for said Florida Citrus Commission, Bradenton, Florida.

You and each of you will please take notice that the undersigned, as attorneys for plaintiffs in the above styled cause,

have filed a complaint in this cause, praying for an order restraining and enjoining the enforcement of Chapter 16862 Laws of Florida, acts of 1935, known as Growers' Cost Guarantee Act; that the Honorable Alexander Akerman, District Judge of the above styled court has issued a temporary restraining order dated March 23, 1939.

You and each of you will take further notice that the complaint prays for a temporary injunction, and that the undersigned, as attorneys for the plaintiffs will on April 10th, 1939, at ten o'clock in the forenoon, apply to the Honorable Alexander Akerman and two other Judges constituting a Three-Judge Court, at the Court House at Orlando, Florida, for the issuance of a temporary injunction as prayed in said complaint.

This the 1st day of April, 1939.

John B. Sutton, G. L. Reeves, Attorneys for Plaintiffs.

[fol. 46] State of Florida,
County of Hillsboro:

Before me, the undersigned authority, on this 1st day of April, 1939, personally appeared Agnes Nores, who, being by me first duly sworn, deposes and says that she is employed in the office of John B. Sutton and G. L. Reeves, of Tampa, Florida, counsel for the plaintiffs in the above entitled cause, and that on this date she deposited in an official mail box in the said City of Tampa, Florida, a copy of the foregoing notice, to each of the persons named in the foregoing notice, and at the addresses given in said notice; the envelopes carrying said notices containing sufficient amount of postage to insure delivery.

Agnes Nores.

Sworn to and subscribed before me this 1st day of April, A. D., 1939. Lelah B. Jackson, Notary Public. State of Florida at Large. My Commission expires June 1, 1930. (Seal.)

[fol. 47] In United States District Court

Order Designating Hearing on Application for Temporary Injunction—Filed April 10, 1939

Temporary restraining order having been issued in the above cause on March 23, 1939, to remain in full force and

effect until the further order of this Court, and the plaintiffs having prayed for temporary injunction;

Now Therefore pursuant to Section 3 (a), Title 28 U. S. C. A., I hereby call to my assistance for the hearing and determination of the application for temporary injunction the Honorable Robert T. Ervin, United States District Judge, in and for the Southern District of Alabama, and the Honorable Alexander Akerman, United States District Judge for the Southern District of Florida, the hearing of [fol. 48] said application to be held on April 10, A. D., 1939, at ten o'clock in the forenoon in the Court House, in the City of Orlando, State of Florida.

Dated this 10th day of April, A. D. 1939.

Leon McCord, U. S. Circuit Judge.

We consent to this order being signed by Judge McCord.
John B. Sutton, G. L. Reeves, Atty's for Plaintiffs.
H. E. Carter, Atty. for Defendant.

IN UNITED STATES DISTRICT COURT

AMENDMENT TO COMPLAINT—Filed April 10, 1939

Comes now the above named plaintiffs, and with leave of Court amends their complaint heretofore filed in this cause by adding thereto a paragraph to be known as Paragraph XXIII-A to read as follows:

"XXIII-A. Plaintiffs further allege by reason of the facts and circumstances herein alleged the Statute under attack and the Resolution and Order of the Florida Citrus Commission issued thereunder, violate the Constitution of the United States in that they impair the obligations of [fol. 49] the contracts of these plaintiffs and deny, impair and restrict the right of the plaintiffs to freedom of contract as guaranteed by the Constitution of the United States; they abridge the rights of personal liberty of these plaintiffs, and arbitrarily interfere with the private business of these plaintiffs and prohibit the lawful occupations of these plaintiffs, and impose unreasonable and unnecessary restrictions thereon, to the extent that they violate the Constitution of the United States; the said Statute and Resolution violating the Fourteenth Amendment of the Constitu-

tion of the United States, as well as Article 1, Section 10 thereof.

John B. Sutton, G. L. Reeves, Attys. for Plaintiffs.

Duly sworn to by C. E. Lindsey. Jurat omitted in printing.

[fol. 50] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF CHAS. F. CHASTAIN—Filed April 10, 1939

Before me, the undersigned authority, on this day personally appeared Chas. F. Chastain, to me personally known, who being first duly sworn deposed and on oath stated:

My name is Chas. F. Chastain and I reside in Lakeland, Polk County, Florida. I am employed by the Florida Citrus Commission as Secretary. On January 6, 1939, at the request of citrus fruit producers, including grapefruit producers, the Florida Citrus Commission instructed its employees to gather and compile all available information in regard to the cost of producing grapefruit in the State of Florida. These instructions of the Commission were followed and at a meeting of the Commission on January 16, 1939, this information was made available to the Commission. The information consisted of data and figures showing cost of production of grapefruit on several hundred groves in Florida over a period of several years. At the same meeting, January 16, 1939, the Commission received from the Commissioner of Agriculture a declaration in which the Commissioner declared the existence of a State Emergency in the grapefruit industry of Florida and called upon the Commission to take such action as might be necessary to put into effect the provisions of the Growers' Cost Guarantee Act, which is Chapter 16862, Laws of Florida, Acts of 1935. At the meeting on January 16, 1939, there was also presented to the Commission petitions which were signed by producers of citrus fruit in Florida, including producers of grapefruit, and which the Commission instructed Mr. T. L. Hodson, Assistant Secretary, to check [fol. 51] against the Federal Emergency Relief Administration survey and supplemental surveys of citrus producing acreage in Florida. This was done and report made to the

Commission that the acreage of citrus fruit represented in said petitions considerably exceeded fifty (50) per cent of the total acreage of citrus fruit in the State. At the same meeting Mr. W. W. Hubbell, Chief Field Agent for the Commission, acting under instructions previously given, and Mr. R. H. Howard, Assistant Extension Economist of the Agricultural Extension Service, University of Florida, at Gainesville, Florida, submitted to the Commission information and data relating to the cost of production of grapefruit in Florida as compiled from costs of several hundred groves over a period of several years and from which was computed the average cost of production of grapefruit for the 1938-39 season. The Commission went fully into the subject of arriving at the average cost of production of grapefruit. In addition to all available information on the subject, the members of the Florida Citrus Commission are experienced citrus fruit producers or handlers, as they are required by law to be, and in arriving at the cost of production of grapefruit they discussed information obtained through their own experience and knowledge of the growing of citrus fruit.

In deliberating on the matter and in arriving at determinations the Commission, with the advice of its Attorney, followed the requirements and conditions in the Growers' Cost Guarantee Act. It found and determined that all handlers of citrus fruit in the State of Florida were subject to the provisions of the Act, and further found and determined that the average reasonable cost per standard [fol. 52] packed box of producing grapefruit in Florida for the 1938-39 season is thirty-two (32) cents, and accordingly fixed this sum as the cost of production. Upon the basis of all of the proceedings and after complying with the conditions and requirements in the law, the Commission adopted and entered a Resolution and Order making the determinations mentioned.

Chas. F. Chastain.

Sworn to and subscribed before me this 8th day of April, A. D. 1939. Myrtle Barksdale. My com. exp. 12-3-40. (Seal.)

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF J. F. MAYS—Filed April 10, 1939

[fol. 53] Before me, personally appeared the undersigned authority, J. F. Mays, who after being first duly sworn, upon oath, deposes and says:

That he is in charge of the Bond and License Department of the Department of Agriculture of Florida, which Department is responsible for the enforcement of Chapter 16862, Laws of Florida, Acts of 1935, known as the Growers Cost Guarantee Law. That said Growers Cost Guarantee Law, from January 19, 1939, to the date of the restraining order in this case, was enforced with respect to all cooperative associations in the State of Florida, as well as independent dealers. That there was one cooperative canning plant operating during said time, namely, the Florida Citrus Canners Cooperative at Lake Wales, Florida. That inspectors of the Department of Agriculture made regular inspections from time to time at the plant of the Florida Citrus Canners Cooperative at Lake Wales, for the purpose of checking on their compliance with the Growers Cost Guarantee Law, and found it to be a fact that this Cooperative regarded themselves as coming within the provisions of this Act and were and are, in good faith, complying therewith. Likewise, all fresh fruit cooperative shippers were checked by inspectors of the Department and were found to be complying with the Growers Cost Guarantee Law by refusing to ship grapefruit for their members unless a net of 32¢ per box on the tree could be realized for the producers.

Affiant further states that the so-called grower-canners operating in Florida, have separate corporations for the ownership of the grove properties where the grapefruit is produced and the canning and shipping plants, where the [fol. 54] products are processed for marketing. That the Department of Agriculture has enforced the Growers Cost Guarantee Law during the period of its enforcement against such canning corporations, upon the theory that since they were contracting agencies, they were subject to the Law.

Affiant further deposes that he knows of several canning corporations in Florida, that have operated during all or part of the time while the Act was being enforced, that consistently paid the grower 32¢ per box for his grapefruit

in compliance with the Law, and that such canning plants made a profit in their business.

Affiant further says that the Commissioner of Agriculture has enforced the Law strictly, fairly, uniformly and impartially during all periods of enforcement against independent dealers, cooperative associations and so-called grower-shippers and grower-canners.

J. F. Mays, Affiant.

Subscribed and sworn to before me, this 10th day of April, 1939. Leona Torrey, Notary Public. My commission expires Feb. 9, 1942. (Seal.)

IN UNITED STATES DISTRICT COURT

ADDITIONAL AFFIDAVIT OF CHAS. F. CHASTAIN—Filed April 10, 1939

[fol. 55] I, Chas. F. Chastain, Secretary to the Florida Citrus Commission, certify that the attached is a full, true and correct copy of a Resolution and Order unanimously adopted by the Florida Citrus Commission in meeting duly assembled at Lakeland, Florida, on January 16, 1939.

Witness my hand as Secretary aforesaid and the seal of the Florida Citrus Commission at Lakeland, Florida, on this the first day of March, 1939.

Chas. F. Chastain, Secretary. (Seal.)

[fol. 56] Resolution & Order

Whereas, Honorable Nathan Mayo, Commissioner of Agriculture of the State of Florida, by and with the consent and advice of Honorable Fred P. Cone, Governor of the State of Florida, has by proclamation dated the 13th day of January, A.D., 1939, declared the existence of a State emergency in the citrus industry, under authority of Chapter 16862, Laws of Florida, Acts of 1935, known as the Grower's Cost Guarantee Law; and

Whereas, petitions signed by persons, firms, corporations and Associations, which this Commission finds own or control 50% or more of the producing acreage of citrus fruit and 50% or more of the producing acreage of grapefruit in the State of Florida, have been presented requesting the Florida Citrus Commission to determine and record in

permanent form the average reasonable cost per standard packed box of producing grapefruit; and

Whereas, the Florida Citrus Commission, has determined that all citrus fruit dealers handling grapefruit now being grown in the State of Florida are subject to the provisions of said act; and,

Whereas, the Florida Citrus Commission, based upon said proclamation of the Commissioner of Agriculture and the Governor of Florida, and upon said petitions, having proceeded as authorized and required by said Chapter 16862, Laws of Florida, Acts of 1935, hereby determines and records in permanent form the average reasonable cost per standard packed box of producing grapefruit to be thirty-two (32¢) cents for the citrus fruit season 1938-39;

Now, Therefore, the Florida Citrus Commission does hereby find, determine and order that the average reasonable cost per standard packed box of producing grapefruit is thirty-two (32¢) cents and that said price be recorded in permanent form for the season 1938-39 and that every contract, agreement, plan or arrangement with the grower by or under which his grapefruit shall be bought, marketed or processed shall be held to require that the person, firm, corporation or association buying, marketing or processing said grapefruit shall in any event pay the grower said cost of production as herein ordered and as provided in Chapter 16862, Laws of Florida, Acts of 1935.

The foregoing resolution and order are unanimously adopted and promulgated by the Florida Citrus Commission in open meeting duly assembled in Lakeland, Florida, on this the 16th day of January, A.D., 1939, and shall become effective at 12:01 a.m. Friday, January 20th, A.D., 1939.

Florida Citrus Commission, by John Maxcy, Chairman.

Attest: Chas. F. Chastain, Secretary. (Seal.)

[fol. 57] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF JOHN MAXCY—Filed April 10, 1939

Before me, the undersigned authority, on this day personally appeared John Maxcy, to me personally known, who after being first duly sworn, deposed and on oath stated:

"My name is John Maxcy. I reside at Frostproof, Polk County, Florida. I am Chairman of the Florida Citrus

Commission, which position I have occupied since October, 1937. I was present at all of the meetings of the Florida Citrus Commission at which the matter of putting into operation the provisions of Chapter 16862, Laws of Florida, Acts of 1935, known as the Growers' Cost Guarantee Act, was considered and I am familiar, from my own personal knowledge, with the facts and circumstances in connection with the Commission proceedings and action by which the resolution and order determining and fixing the cost of production per standard packed box for grapefruit for the 1938-39 season was arrived at and adopted.

On the 6th day of January, 1939, at a meeting of the Florida Citrus Commission duly held in Lakeland, Florida, at the headquarters of the Commission, based upon a request from grapefruit growers in Florida, the Commission instructed its employees, including the Chief Field Agent, to immediately proceed to gather, assemble and compile all information possible relating to the cost of production [fol. 58] of grapefruit in Florida. Such instructions being given in compliance with the requirements of Chapter 16862, Laws of Florida, Acts of 1935.

On January 16th, 1939, at a meeting of the Florida Citrus Commission duly held in Lakeland, Florida, a declaration by Honorable Nathan Mayo, Commissioner of Agriculture of the State of Florida, issued by and with the consent of Honorable Fred P. Cone, Governor of Florida, was presented and filed with the Commission, by which the Commissioner of Agriculture declared the existence of a State emergency in the grapefruit industry and which declaration was promulgated under the provisions of the Growers' Cost Guarantee Act. At the same meeting on January 16, 1939, there was presented and filed with the Commission, petitions signed by persons, firms, cooperations or associations owning or controlling fifty per cent (50%) or more of the producing acreage of citrus fruit, including fifty per cent (50%) or more of the producing acreage of grapefruit in the State of Florida, requesting the Florida Citrus Commission to proceed as required by law to put into operation the provisions of the Growers' Cost Guarantee Act with reference to grapefruit. Based upon the declaration of the Commissioner of Agriculture and the Governor and upon petitions referred to, which the Commission found to represent more than fifty per cent (50%) of the citrus producing acreage and more than fifty per cent (50%) of the grapefruit pro-

ducing acreage in Florida, the Commission considered the fixing of the cost of production of grapefruit as authorized and required by the Growers' Cost Guarantee Act.

[fol. 59] After considering all of the information available relating to the cost of production of grapefruit, which information included compilations of data supplied by the Chief Field Agent for the Commission and the Agricultural Extension Service of the University of Florida, the Commission found, determined and ordered that the average reasonable cost per standard packed box of producing grapefruit was thirty-two cents (32¢) and that said price be recorded in permanent form for the season 1938-39."

John Maxey.

Sworn to and subscribed before me this the 8th day of April, A.D., 1939. Chas. F. Chastain, Notary Public, State of Florida. My Commission Expires: Notary Public, State of Florida at Large. My commission expires Nov. 7, 1939. (Seal.)

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF T. L. HODSON—Filed April 10, 1939

[fol. 60] Before me, the undersigned authority, on this day personally appeared T. L. Hodson, to me personally known, who being first duly sworn deposed and on oath stated:

My name is T. L. Hodson and I reside in Lakeland, Polk County, Florida. I am employed by the Florida Citrus Commission as Assistant Secretary. On January 16, 1939, I was instructed by the Florida Citrus Commission to check petitions signed by citrus growers in Florida, including growers of grapefruit, requesting the Florida Citrus Commission to put into operation the provisions of the Growers' Cost Guarantee Act. Such petitions showed the acreage of citrus fruit, including the acreage of grapefruit, produced by each of the growers whose signatures appeared on said petitions. The total acreage of citrus fruits represented in said petitions was considerably in excess of fifty (50) percent of the total citrus producing acreage in the State of Florida as shown by information compiled by the Federal Emergency Relief Administration

and supplemental information as required in the Growers' Cost Guarantee Act. My report to the Florida Citrus Commission, pursuant to instructions, showed that the citrus producing acreage represented in the petitions presented to the Commission was more than fifty (50) percent of the [fol. 61] total citrus producing acreage in the State of Florida.

T. L. Hodson.

Subscribed and sworn to before me, this 8 day of April, A.D., 1939. Chas. F. Chastain, Notary Public, State of Florida at Large. My commission expires No-. 7, 1939. (Seal.)

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF W. W. HUBBELL—Filed April 10, 1939

Before me, the undersigned authority, on this day personally appeared, W. W. Hubbell, who being first duly sworn, deposes and on oath states:

"My name is W. W. Hubbell and I am now and was on and prior to January 16th of this year, employed as Chief Field Agent for the Florida Citrus Commission. In the course of my duties I was directed by the Florida Citrus Commission to obtain and submit to the Commission for consideration at a meeting on January 16th, 1939, information and data relating to the average reasonable cost per standard-packed box of producing grapefruit in the State of Florida for the crop season, 1938-39. In following out the instructions of the Commission, I gathered and compiled information from growers and shippers of grapefruit in Florida, used information available from various sources and consulted with and obtained information from the De- [fol. 62] partment of Agricultural Economics of the Agricultural Extension Service, University of Florida, at Gainesville, Florida. At the meeting of the Florida Citrus Commission in Lakeland, Florida, on January 16, 1939, I submitted to the Commission an estimated figure, based upon all of the studies and information available, which showed the average reasonable cost per standard packed box of pro-

ducing grapefruit in Florida for the season, 1938-39, to be thirty-two cents (32¢)."

W. W. Hubbell.

Sworn to and subscribed before me this the 31st day of March, A.D., 1939. T. L. Hodson, Notary Public, State of Florida at Large. My commission expires Jan. 18, 1942. (Seal.)

IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF R. H. HOWARD—Filed April 10, 1939

[fol. 63] Before me, the undersigned authority, on this day personally appeared R. H. Howard, to me personally known, who being first duly sworn deposed and on oath stated:

"My name is R. H. Howard. I reside in Gainesville, Florida and I am now and was prior to January 1, 1939, Extension Economist, of the Agricultural Extension Service of the University of Florida, in which capacity I had occasion, during a period of several years last past, to study extensively the cost of producing citrus fruits in Florida, including the cost of producing grapefruit. I have prepared bulletins and special articles which have been published upon this subject. In January of this year, at the request of the Florida Citrus Commission, I made available to the Commission information regarding the cost of production of grapefruit in Florida. The information and data which has been gathered by the Agricultural Extension Service of the University of Florida and which formed the basis for the information given to the Florida Citrus Commission was arrived at by taking the cost of production of citrus fruit upon a representative number of citrus groves. The estimated cost of production of grapefruit for the 1938-39 season was arrived at by using the costs of production for previous seasons, due regard being held for the costs per acre and the probable production per acre. The costs for [fol. 64] the current season would have to be estimated as no definite cost per box could be arrived at until the entire crop has been harvested and the production per acre ascertained. I regard the figures arrived at, of thirty-two cents (32¢) per standard packed box for grapefruit for the

1938-39 season, to be a reasonable and fair cost of production."

R. H. Howard.

Sworn to and subscribed before me this the 8th day of April, A. D. 1939. Mary L. Johnson, Notary Public, State of Florida. My Commission Expires: Notary Public, State of Florida at Large. My Commission expires June 4, 1942. (Seal.)

[fol. 65] IN UNITED STATES DISTRICT COURT

Transcript of Testimony—Filed July 7, 1939

Taken on hearing before Hon. Leon McCord, U. S. Circuit Judge, Hon. Robt. T. Ervin, U. S. District Judge, and Hon. Alexander Akerman, U. S. District Judge, composing a Three-Judge Court sitting in U. S. District Court, Orlando, Orange County, Florida, on April 10, 1939, at 10 o'clock A. M.

APPEARANCES:

Hon. G. L. Reeves and John B. Sutton, Esq., representing the plaintiffs,

Judge H. E. Carter, Asst. Attorney General of Florida, Judge O. K. Reaves, and Wm. C. Pierce, Esq., representing Nathan Mayo, as Commissioner of Agriculture, defendant, and E. Glenn Grimes, Esq., representing the Citrus Commission, and

Ed. R. Bentley, Esq., representing the Florida Citrus Growers, Inc., intervening petitioner-defendant.

COLLOQUY

The Court: I believe there is someone that has an intervention.

G. L. Reeves: We expect to offer some evidence this morning; the gentlemen are in the room. Do you want to put them under the Rule?

Judge Reaves: Do I understand they are going to take testimony of witnesses at this hearing or use affidavits?

The Court: We have no rule about it. I am willing to hear testimony. I think we should relax the Rule.

G. L. Reeves: This suit is brought to test the validity [fol. 66] of the law of Florida known as the Growers Cost & Guaranty Law. I think it would be well to read that act first.

(Reading.)

"An Act Relating to Citrus Fruit: Prescribing Conditions and Limitations Upon the Sale, Marketing and Processing Thereof, and the Effect of Contracts of Sale and of Marketing and Processing Agreements.

Whereas, it is found by the Legislature and hereby declared that the production and distribution of citrus fruit is a paramount industry in Florida upon which the prosperity of the State in a large measure depends; that such fruit and *and* juices thereof have become and are generally used in great and rapidly increasing quantities, both voluntarily and upon advice of physicians, by people of all classes, ages and conditions; that it is necessary for the reasonable comfort, welfare and health of the people and in order to build up their strength and vigor that an adequate and dependable supply of high grade citrus fruit be constantly available, and the production, transportation, processing, distribution and sale of citrus fruit in the State of Florida is therefore hereby declared to be a business affecting the public health and interest, that unfair, unjust, destructive, demoralizing, and uneconomic trade practices have been and are continuing to be carried on in the sale and distribution of citrus fruit in this State to the extent that such fruit has been and is continuing to sell in many cases at prices below the cost of production and the constant, dependable and adequate supply of such fruit for sale and consumption [fol. 67] is thereby so seriously imperiled as to threaten the breakdown of the industry; that the present acute economic condition in Florida is in part the consequence of a severe and increasing disparity between the prices of citrus fruit and other commodities; that it is both expedient and necessary to build up the quality and reputation of Florida's citrus fruit in the market and to stabilize the Florida citrus industry and to protect the public and the growers against fraud, deception, and financial loss through further continuation of unscrupulous practices and haphazard methods in connection with the marketing of citrus fruits, and to that end, to assure the grower returns at least equal to the cost of production of high grade citrus fruit,

Therefore, in the exercise of the police power of the State for the purpose of protecting and promoting the public health and general welfare,

Be it Enacted by the Legislature of the State of Florida:

Section 1. This Act shall be known and called the Growers Cost and Guarantee Act.

Section 2. The term "Citrus Fruit" as used herein means and includes only the fruits Citrus Grandis, Osbeck, commonly called grapefruit, and Citrus Sinensis, Osbeck, commonly called oranges, and Citrus Nobilis Deliciosa, commonly called tangerines, grown in the State of Florida.

The term "standard packed box" means 1-3/5 bushels whether in bulk or in a container.

That Act was passed in 1935, and the Florida Citrus Commission passed a resolution on the 16th day of January, 1939, to become effective on January 20th, pursuant to pro-
[fol. 68] visions in that act. (Reading resolution and order.)

There is in existence another Act which is commonly known as the Bond & License Act, passed in 1937, a copy of which is attached to the Bill of Complaint, which is rather long, and I will not take the time to read it, but I will attempt to show the Court how that is involved in this Act • • •.

This Act provides for people dealing with citrus, called citrus fruit dealers, and which includes people in the business of canning grapefruit and grape fruit juice, and whom we represent in this case, must put up bond and procure a license; the bond provides that they carry out the agreements with the grower. Now under that Act the Commissioner of Agriculture is given authority to revoke the license of citrus fruit dealers when they violate that Act, and in the Section giving that authority it is further stated that "for the violation of this Act or any other citrus Act applicable to citrus fruit dealers", therefore the plaintiff in this case, who are canners, have been threatened by the Commissioner of Agriculture to have their license revoked under the Florida License Act, because of their failure to pay .32 under this Act, and this suit is therefore brought in an effort to obtain relief and to enjoin the Commissioner of Agriculture from revoking that license. I will run through the Bill——

The Court: We have all read it.

Mr. Reeves: Then I will point out to the Court our position in this matter. It is our understanding that at this

hearing it is not necessary to go into all the merits of the case, to make a final determination, but it is our duty to show that there is a substantial question involving jurisdiction [fol. 69] matter and credit, which we ask you to enjoin, and we shall receive irreparable damage unless the relief is granted that is prayed for. We feel that in this suit there are some novel questions involved, and that the Court should go ahead and protect us until final hearing, until we can get the testimony in and the issues made up. As I understand it, no papers have been filed by the defendants or either of them.

The Court: I think the Florida Citrus Commission have asked to intervene.

Mr. Grimes: That is correct.

Mr. Reeves: Briefly, your Honor, it is our contention that this Act violates the Commerce Law of the Constitution, which attempts to cast the burden upon Interstate Commerce. 99% of our products go into Interstate Commerce, and we take the position that this Act is arbitrary and unreasonable. We take the position that the Act is discriminatory for this reason; that canning plants owned by growers themselves, or canning plants owned by cooperative associations are not burdened with this Act, and that as competitors of what we refer to as independent canners, whom we represent, these canning plants have continued and are continuing to operate, not subject to the provisions of this Act, that they have been buying their supplies and raw products at the current market prices, caused by supply and demand, which is far less than .32, and that these plants are producing the canned finished product, and offering the same for sale at a price which will not give to the grower .32 on the tree. The Florida Citrus Commission went a little further, and said that the .32 referred to was on the tree, and make an allowance of .07 for bringing it into the plant, so [fol. 70] it would be .39 delivered to the plants; that therefore, we are unable to compete with these other people in the State of Florida, who are going right ahead with their business, and therefore this Act is discriminatory.

The Court: They also buy from others, don't they?

Mr. Reeves: No sir, the Cooperative Association are made up of a large number of owners, who put out all of their product.

The Court: Their own product only?

Mr. Reeves: Yes sir. They are not buying on the market; they are just using their own at such prices. We also take the position and urge that under the law we have this pedler question involved, that under the law there is a federal question involved * * *.

The Court: I notice your Bill doesn't make any specific charge as to the violation of the contract right—freedom of contract, but you do pray for any relief.

Mr. Reeves: That's right * * * I didn't go specifically into that at the time. The Supreme Court of Florida has ruled that with a certain kind of contract these canners were operating under it was in violation of the Statute, and we were advised by the Commissioner of Agriculture that unless we did something that their license would be revoked. I feel like we do have in the Bill sufficient for the relief. There is one point that seems to us rather important in this case, and that is this: This Growers Cost Guarantee Law seems to have been passed for the purpose and that the only reason it was passed, was to guarantee the grower receive his .32 on the tree, and that it makes no provision for penalty for violation of the Act. All that Act does is to create a liability on the part of anyone who deals with the grower to [fol. 71] pay them .32, and that therefore the Commissioner of Agriculture, under the Foreign License Law has no authority whatsoever to revoke a license for anyone to deal with the grower without paying .32 on the tree. One point I would like to call to the attention of the Court—several of the canners after this regulation went into effect, attempted to operate under a contract whereby the owners whose fruit was decaying and rotting and couldn't sell it to the canners, asked them to can the fruit for them and charge the proper price for canning it, the canned products belonged to the owner. It was felt that that was not in violation of the law, however the Supreme Court of Florida said that it was in violation of the law, and therefore that practice had to stop, and we contend that each of our plaintiffs, unless the relief prayed for is granted, will suffer damage far in excess of $3,000.00. With that preliminary statement I would like to call one or two witnesses to the stand.

Thereupon, to maintain the issues on their behalf the plaintiffs produced as a witness one.

C. E. LINDSEY, who being first duly sworn, testified as follows:

Direct examination.

By Mr. G. L. Reeves:

Q. You are Mr. C. E. Lindsey?
A. Yes, sir.
Q. You are in the canning business of the State of Florida?
A. Yes, sir.
Q. What is the name of your company?
A. Lakeland Highlands Canning Co.
Q. Where does that company operate?
A. Near Highlands City, Florida.
[fol. 72] Q. That's near Lakeland, is it?
A. Yes.
Q. Mr. Lindsey, you have gone over the bill of complaint—you did not swear to the bill of complaint, did you?
A. No.
Q. You have gone over it with us, though, have you not?
A. Yes.
Q. You have gone over the facts alleged in there, have you?
A. Yes, sir.
Q. Are those facts true and correct?
A. Yes, sir.
Q. Now, Mr. Lindsey, tell the Court please what the situation in the citrus crop, this year, is, as compared with other years; in other words, is this a large or small crop this year?
A. This is the largest crop ever grown in the State of Florida, and the largest crop in the nation—this year's production is.
Q. You say it is the largest in the nation—is grapefruit grown in other sections of the country?
A. You mean in the United States?
Q. Yes.
A. Yes, in California, Arizona, Texas, Porto Rico and Florida.
Q. Which of those sections, if any, compete with Florida?
A. The largest competitor is Texas, by reason of the volume being near the volume grown in Florida.
Q. Do you know the estimated crop in Texas this season?

A. I think the federal estimate was 15 million boxes for Texas and 21 million 500 thousand for Florida.

[fol. 73] Q. Is that the largest Texas has ever had?

A. Yes, sir.

Q. How long have you been in the canning business in Florida?

A. 12 or 14 years.

Q. Now going back a few years can you tell us any particular season that was large enough to use it as a comparison with this year?

A. The largest production was two seasons back prior to this season.

Q. That would be in 1936 and 1937?

A. 1936-37.

Q. This regulation that is involved in this suit went into effect about January 19th; were you and the other canners of the State of Florida operating prior to that time?

A. Yes.

Q. Approximately when does the canning season open?

A. There is some variance. As I recall the canning started generally about the first of November, this season, November, 1938.

Q. Does that vary a little?

A. At times, yes. I think possibly the preceding year, by reason of the later maturity it was near December 1st before the plants started operating.

Q. From the time they have operated, up until January 19th, you had no price fixing law controlling you, did you?

A. No, sir.

Q. Were plants operating pretty good volume during that time?

A. Yes.

Q. Can you tell us approximately what fruit was being [fol. 74] bought for canning purposes—grapefruit?

A. You mean prior to the invoking of this law?

Q. Yes.

A. Well, the purchasing of fruit is based on two different grades one is for the hearts, which means medium sized fruit, for sections. That price was .25 a box at the plant; for the juice it was approximately .15. That would be the extreme small and extreme large sizes used for juice.

Q. The fruit you buy for juice you do not pay as much for as you do that well rounded out and used for sections.

A. No.

Q. Mr. Lindsey, can you tell us approximately what canned grape fruit juice would have to bring in order to give the grower 32 cents on the tree?

A. Approximately sixty-five and sixty-seven and a half perhaps; that depends upon whether it is sweetened or unsweetened. There is a variation in the cost of sugar.

Q. Do you know what grapefruit juice, canned, in Texas, has been selling for?

A. At the present time I think you can buy extreme large quantities unsweetened at 42½ cents. In speaking of these prices I am speaking of No. 2 cans.

Q. You are using that as the basis?

A. Using that as the basis. The other sizes would be proportioned.

Q. Of course, if you met the Texas competition at 42 cents, you would either take a tremendous loss paying 32 cents here, or you just couldn't operate, is that it?

A. That is correct.

Q. For sections—grapefruit that is capable of being put into sections—if you paid 32 cents for that, what would [fol. 75] you have to sell it for—the finished product?

A. That would be quoted from 85 cents up, depending on the quantity of sugar that would be used in the processing.

Q. Mr. Lindsey, from the time this order went into effect in January, was there any of the grapefruit canned in Florida by Cooperative Grower Owned Plants?

A. During that period?

Q. Yes.

A. Yes, sir.

Q. Do they compete with your business?

A. Yes, sir, the grower owned and cooperatives enjoy about 30 per cent of the volume of the canning industry of the State of Florida, in citrus.

Q. They handle about 30 percent?

A. Yes, sir.

Q. Do you know what the Cooperative or Grower Owned were selling their finished product for—take hearts for instance?

A. They were selling in the earlier stages of the invoking at 75 cents a dozen.

Q. Do you know that as a positive fact?

A. Yes, sir.

Q. Did you buy some of those?

A. I did.

Q. Then that fruit could not have net-ed the owner 32 cents, could it?

A. On the tree—no.

Q. In your business and in the business of the other plaintiffs, do you take orders ahead of time, or after you get your fruit packed, or how?

[fol. 76] A. We operate both ways. We take orders sometimes for later shipment; other times we will have it manufactured for immediate shipment.

Q. When this regulation went into effect in January, 1939, did you have any orders for the finished product outstanding?

A. Yes, the first of January we did.

Q. How much?

A. I am not sure, somewhere between 100,000 and 200,000 cases.

Q. You had orders existing that you had not filled?

A. Yes.

Q. Was that at a definite price?

A. Yes.

Q. Then when the regulation went into effect you had to pay 32 cents, and could you fill those orders then?

A. We could not fill them without losing money.

Q. Would you have lost a substantial amount?

A. Yes.

Q. Would that have exceeded $3,000.00, Mr. Lindsey?

A. Yes, a lot more than $3,000.00.

Q. What happened—did you get out of those orders?

A. We took it up with the distributors whom we were serving, and advised them what had happened—of the invoking of the law, and that was termed an emergency, and we asked to be relieved from the filling of them, or at least deferring it until we could see what occurred, and it was granted in every instance. The people we were serving—these were real old customers that we had had for sometime with the exception of one or two, which were rather new customers—they granted that, and made purchases evidently in other directions, and we have lost them.

[fol. 77] Q. You are operating under the protection of this injunction now, are you?

A. Yes.

Q. Since you have been operating under the protection of this injunction have those people dealt with you again?

A. All except one or two.

Q. You have lost those?

A. Yes, at least they are not ordering. We never like to think we have lost them permanently.

Q. This canned grapefruit, does it compete with other canned articles?

A. Other canned fruit?

Q. Yes.

A. Yes, sir.

Q. Name some of those it competes with?

A. In your juices you compete with the tomato, with the pineapple—that perhaps would be the heavier commodities that we compete with. Then in the fruits, almost any canned fruit would be competition with another canned fruit.

Q. Take this year as compared with the year you mention, which was the largest year,—1936-37—up until this bill of complaint was filed about March 23rd, 1939, what was the comparison in the canning finished product as with around 1936-37?

A. There was about two million cases less packed around the 15th and 20th of January in comparison with the corresponding date two years ago.

Q. What was the cost of it?

A. I think I should make a correction. I said in January —I mean in March. That was by reason of the inactivity of [fol. 78] this period during from around the middle of January until this date in March, with canners that buy and pay cash for their fruit.

Q. Inactivity was the cause of it?

A. Yes.

Q. Up until January 19th you were running as usual?

A. Yes.

Q. But from January 19th to March 23rd is where your deficit showed up?

A. Yes.

Q. That's about two million cases?

A. Yes, sir.

Q. What happened to that fruit that was usually going into cans during that period of time?

A. There is perhaps some of it still on the tree; there has been a large percentage that has dropped in all the groves.

Q. Do you know whether or not any of the growers in the State of Florida are willing to sell their fruit at less than 32 cents except for the provisions of this Act?

A. Yes, any number of them.

Q. Could you have gone on and bought fruit for less than 32 cents?

A. An unlimited amount.

Q. Is it a fact that according to this Act some fruit has had to decay and rot, and the grower couldn't get anything for it?

A. Yes.

Q. Mr. Lindsey, will you explain to the Court, please, something about your operation of the plant, to show what your loss would be in case you cannot operate? I will ask [fol. 79] you this preliminary question first; if this law is upheld and the injunction is not granted, and you are forced under the provisions of the Law, can you operate your business and pay 32 cents without losing money?

A. For the balance of this season?

Q. At this time, yes.

A. In my opinion I cannot.

Q. You don't know what next year will do?

A. That's right.

Q. If you have to close down, how does your loss run; to make it clear, if you close down you are not making a profit, you would have been making if you operate, is that so?

A. I would not.

Q. In addition, do you have any regular expenses or costs that would run against you while you closed down?

A. I imagine our costs would be at least $500.00 a week that we couldn't get away from for sometime at least. In other words, we would have to dissipate all of our organization, which is the sales, and clerical and management. I think that would run fully $500.00 a week.

Q. That's a regular expense that you pay out?

A. Yes.

Q. That would run over from now to the end of the season, $3000.00 or $4000.00 alone, that item, would it?

A. That would continue through the entire year. You have to keep your organization, and while you are not operating all the year you have hopes of having secured sufficient amount of profit to have sustained these people so as to have them the year around.

Q. Usually when the season is over you have to maintain [fol. 80] them anyway, is that right?

A. Yes.

Q. Except for this year you would be operating and getting the use of them at this time, would you?

A. Not only that; we would acquire sufficient amount to carry them for the inactive period.

Q. In this case, you are somewhat familiar with the business of the other plaintiff's are you?

A. Yes.

Q. Tell us how many employees are used in the business of these plaintiffs?

A. You mean the total of all of us?

Q. Yes.

A. I imagine around 5,000 or 6,000 people.

Q. Do you know what the weekly payroll would run?

A. It would probably be around $100,000.00 a week during your operating period, which is this time of the year.

Q. How much of the canned Florida grapefruit goes into Interstate Commerce?

A. Practically all. It would be over 99%.

Q. Do you sell any foreign countries?

A. Yes.

Q. Where?

A. Its scattered in a number of countries, but the bulk of it goes to the United Kingdom.

Q. Tell the Court how much goes to the United Kingdom every year?

A. Approximately a million cases.

Q. Do you know approximately what percentage of the grapefruit grown in the State of Florida is for canning purposes?

[fol. 81] A. That would vary perhaps with the total yield. I think it is perhaps around 40 per cent.

Q. That has been increased every year, has it?

A. Yes, it has.

Q. Do you know what the canners in the State of Texas have been paying for their requirements?

A. Yes. I was with Mr. Hall of Texas a week ago, and he says they are buying——

The Court: If you are testifying from hearsay, don't do that.

Q. Do you know what the market is out there?

A. The market for the raw product.

Q. What is that?

A. $1.50 to $2.50 on the tree, per ton.

Q. What does that amount to per field box?

A. 23½ boxes to the ton.

Q. Tell us what that would amount to per field box?

A. Roughly six to twelve cents a box—six to ten cents a box.

Q. That's the market, what they are paying, and they are competing with your product, are they?

A. In a big way.

Q. You are talking about competing with Texas. Does the Florida canned citrus product and the Texas canned citrus product bring the same amount in the market?

A. In the unsweetened I would say yes, but on the sweetened Florida will enjoy a little higher price for their product than Texas.

Q. Will that differential in the price be sufficient to enable you to pay 32 cents and compete with their ten, twelve [fol. 82] and fifteen cents over there?

A. No, not at all. Their juice is practically all packed as unsweetened, and I do not believe that Florida can enjoy any material advance over their quotations in the distributing market.

Q. Generally, how is that Florida canned grapefruit distributed—what means are used for that?

A. You mean in the shipment of it or in the disposing of it?

Q. I mean do you use dealers or distributors, or how is it handled, when it leaves here where does it go?

A. It is shipped to the Northern States or Western, or Export. It is purchased by the chain stores and wholesale distributors, who in turn send it on its way to the consumer.

Q. Is that sold under a label?

A. Yes.

Q. All cans are labeled are they not?

A. Yes.

Q. Do all cans carry the label of the canner or not?

A. The Federal Food & Drug Law provides that it carry either the packer's or the distributor's name appearing on the label.

Q. Then fruit canned in Florida, if it doesn't have the label of the Florida canner the distributor has to put his label on?

A. Yes.

Q. Do they have certain brands that they use?

A. Yes.

Q. Over a period of time they have advanced and built up good will for those brands, have they?

A. They have.

[fol. 83] Q. What effect will the non-production, or if you are unable to operate, in other words, the rest of this season will there be a shortage of canned grapefruit juice and grapefruit as far as your requirements from the Northern market is concerned?

A. As far as us—we would be short quite a lot.

Q. What will happen to the markets if you are not in position to supply them?

A. We would lose our contact. The distributor has to have his source of supply. If we get in a position where we are unable to have that source of supply for them, they make connections otherwise, and we lose them as our customer.

Q. Also is it not a fact that the competing canned juices would take the place of yours and make an inroad into your business?

A. Yes, sir.

Q. Have you been shut down any this year?

A. Yes, sir.

Q. When was that?

A. Immediately following the effective date of the invoking of the Growers Cost & Guarantee Law.

Q. Did you open up and operate any before the injunction was granted?

A. Yes.

Q. Was that under one of these contracts you refer to as customer contracts?

A. Yes, sir.

Q. Tell the court generally the effect of that; how you operated?

A. The grower would deliver the fruit to our canning plant and we arranged with them whereby they were to pay [fol. 84] us all of the expense of the cost of the materials entering into the canning, and we were to hold the goods

for them until August 1st, and for the custom charge there was to be 3 cents per case paid to our company.

Q. And you canned their fruit for them?

A. We canned the fruit for the growers, yes.

Q. And you continued that until the Supreme Court later rendered this decision in the Eckerson case, did you?

A. That's right.

Cross-examination.

By Judge O. K. Reaves:

Q. Mr. Lindsey, as I understand it, there is grapefruit in abundance in Florida this year.

A. Yes, sir.

Q. And but for this law you and the other canners could have bought fruit at your own price?

A. I wouldn't say that.

Q. Well, you allege in the Bill that the growers are willing to sell it for what they could get.

A. That's right.

Q. Then what they could get would depend upon what you and the others were willing to pay, isn't that it?

A. I would think it would depend on supply and demand.

Q. The supply in Florida is not only great, but it is in Texas also, I believe you say.

A. That's right.

Q. It costs more to produce fruit in Texas, Arizona and California than it does in Florida, doesn't it?

A. I don't know.

[fol. 85] Q. Don't you know that all of those states produce under irrigation and that the cost of production is greater?

A. I wouldn't know whether the cost is greater, because I understand in Texas in some areas they do not have to fertilize, so I am not in a position to know about the cost.

Q. You don't know about that?

A. No.

Q. These cooperatives that you are talking about, do you mean by that stores that are organized under the Florida laws for that purpose?

A. I don't know whether they are organized under the Florida laws or not; it would apply to Cooperatives and Grower Owned.

Q. With reference to the growers is it not a fact that the growers have separate corporations that do the canning?

A. Separate corporations from what?

Q. Well, the so-called growers that you say can their own fruit, is it not a fact that they run their canning plants under separate corporations?

A. I can't answer that. I don't know.

Q. Do you not know, that as a matter of fact that many of them do?

A. I don't know.

Q. You have no knowledge of that?

A. No sir, I never made any investigation as to the setup of the companies, as to the corporations, whether they are interlocked or whether they are all in one, I have no knowledge about that.

Q. You do know that they do business under corporate names, and corporate organizations, do you not?

A. Some do, but I am not sure whether all of them do it [fol. 86] under corporate names.

Q. Isn't it a fact that so far as your knowledge goes, the big growers that run canning plants have separate corporations or have their canning plants incorporated and conduct the canning activities as a corporation?

A. I really don't know.

Q. Let's go back to what you call the Cooperatives. You do know, do you not, that the State of Florida has laws under which farmers can organize and have certain privileges that other corporations do not have. Do you know that?

A. No, I don't.

Q. You are not familiar with that?

A. No.

Q. Well, now, suppose you tell us then what you understand by Cooperatives?

A. A cooperative association?

Q. Yes.

A. My understanding is that that is a group in this particular industry—a group of growers that will go into an organization as an association either for marketing, canning, or for grove care, or all.

Q. And you do not know that when they form such an association they form it under the laws of Florida?

A. I would imagine they do, but I am not a member of them, so I have no direct knowledge.

Q. You are including the Citrus Exchange, are you not? I mean in what you call the Cooperatives?

A. For marketing of fresh fruits.

Q. Well, would you class that as a Cooperative, according to your understanding?

A. I would.

[fol. 87] Q. You know that is incorporated under the laws of Florida, do you not?

A. Yes sir, I assume it is.

Q. You say that you had contracts when this law was put into operation which you were able to get cancelled. At what price had you agreed to sell under those contracts?

A. At 75 cents a dozen for fruit in No. 2 cans.

Q. At what price had you agreed to sell juice?

A. At 55 cents in No. 2 cans.

Q. Now these other canned goods that you say you have to compete with, you have always had to compete with those, have you not?

A. Yes, sir.

Q. And you will continue, of course, to have to do so.

A. I presume so, yes sir.

Q. Is the price of grapefruit, canned grapefruit and grapefruit juice in the market this year materially less than in preceding years?

A. Yes, juice particularly is lower.

Q. How much?

A. Well, I don't recall exactly what the prices have been in the past year, but my remembrance is that this is the lowest quotations of grapefruit juice.

Q. How about the hearts?

A. They are probably lower this year than in the past.

Q. Did you sell hearts last year at 75 cents?

A. No, not that low.

Q. What price were you able to get last year?

A. I remember somewhere between ninety cents and a dollar a dozen for the No. 2 cans.

[fol. 88] Q. What price were you able to get for your juice last year?

A. It would be around seventy cents, I imagine. I am only guessing. I have no figures on that, but usually there is about 20 cents a dozen spread between the sections and the juice in No. 2 cans.

Q. And you say the juice is selling this year at 62½ cents?

A. We haven't been able to find that we could get that for it, no.

Q. Is that the price you testified you would have to get in order to pay the grower 32 cents?

A. Yes sir, around sixty-five.

Q. In reference to these Cooperatives, do you know of your own knowledge how much they are paying the grower?

A. No, sir.

Q. I believe you have already testified that the so-called individual growers you do not know whether they are separate corporations that do their canning?

A. Yes.

Q. In reference to your purchase of fruit——

By the Court:

Q. Do you know whether the Cooperatives take from others than members of their own association?

A. No sir, I know of no instance that they take other than from their own members.

By Mr. Reaves:

Q. In your purchases of fruit for your canning purposes, do you buy well in advance or do you buy from week to week, as you use it?

A. In our operation we buy as we might need it.

Q. Buy as you need it?

[fol. 89] A. Yes.

Q. In other words, the supply is such that you feel sure of being able to get fruit without making contracts in advance?

A. This season.

Q. You buy the fruit in the grove or do you buy it delivered at the packing house or at your plant?

A. We might buy fruit in the grove, but usually it is bought on an arrangement where they will pick it and set it on the roadside; we do not have any crew for picking and loading the fruit in the groves. Does that answer your question?

Q. Yes. Sometimes you buy under a plan whereby the grower delivers it to your plant, do you?

A. Yes, sir.

Q. That, of course, is the fruit in its natural state.

A. Yes.

Q. Then you take the fruit and process it yourself, or can it?

A. Yes.

Q. And then you ship those canns out from time to time as you have sales for them, do you?

A. Yes, sir.

Redirect examination.

By Mr. G. L. Reeves:

Q. Grapefruit is a perishable fruit, is it not?

A. Yes, sir.

Q. A perishable product?

A. Yes.

Q. And if it is going to be canned it has to be canned during the particular time that it is ready to can?

A. Yes, sir.

Q. If you are unable to operate now you couldn't wait [fol. 90] and operate in the summer and fall.

A. That's right.

(Witness excused.)

Thereupon to further maintain the issues on their behalf of plaintiffs produced as a witness one FRED ELDER who being first duly sworn, testified as follows:

Direct examination.

By Mr. G. L. Reeves:

Q. You are Mr. Elder?

A. Yes, sir.

Q. Are you in the canning business?

A. At Bradenton.

Q. Your company a corporation?

A. It is.

Q. And it is one of the plaintiffs in this case, is it?

A. Yes, sir.

Q. Tell the Court, please whether or not prior to this order of January, 1939, you had orders for buying and selling any particular grapefruit?

A. I did.

Q. How much had you under contract?

A. In the way we conduct our business we will sell what is called "futures"; my business is very largely export; the export business is quite largely on futures, so as long as we can get a crop and know about what fruit is going to be worth, we sell quite a considerable quantity of futures.

Q. Had you sold any this year?

A. In the neighborhood of 200,000 cases I have sold.

Q. Prior to January 20th, 1939 had you sold any futures then?

[fol. 91] A. Yes, quite a large quantity—upwards of 100,000.

Q. Prior to that time had you made contracts for purchasing the raw product?

A. Yes, sir.

Q. At what price were your contracts for purchase of raw products?

A. They were 20 cents on the tree for the large and 15 cents on the tree for the small. Now if I may explain, there was an industry conference at Washington in October, which I attended, and it was all figured out by the Agricultural Department that the canners, if they could pay 20 cents per box for the fruit on the tree, it would be of very material assistance to the industry. About a week later the growers met in Florida, and passed a resolution asking the canners to pay 20 cents. I was in sympathy with that. I was in Washington, so consequently I made contracts for approximately 100,000 boxes of fruit at those prices—20 cents on the tree.

Mr. Reaves: We ask that the testimony about the resolution passed somewhere be stricken, because the resolution itself is the best evidence. It is immaterial and irrelevant.

The Court: That is inferential, I think, and I don't see that it would be material——

Q. Except for this regulation of January, 1939, could you have bought what you had contracted for and sold what you had sold and made in excess of $3,000.00?

A. Oh yes.

Q. You would have made far in excess of that, would you?

A. Yes, the contracts were valid; I was making them [fol. 92] right along. I tried to keep as far ahead as I could with the contracts, as we would use the fruit from day to day.

Cross-examination.

By Mr. Pierce:-

Q. I believe you submitted a form of contract to the Commissioner of Agriculture after this regulation of Jany. 19 went into effect, did you not?

A. First I tried to run under the contracts which I had made previous to the declaration of the Act.

Q. Answer my question. Didn't you submit such a contract?

A. No, not a contract of the purchase of fruit, if that's what you mean.

Q. Isn't your firm the Florida Grape Fruit Canners, Inc., from Bradenton?

A. Yes.

Q. Wasn't Mr. Blakey your attorney?

A. Yes.

Q. Didn't he appear at the hearing before Mr. Mayo at Winter Haven at which the legality of your contract was tried out?

A. That's another contract. If we can get the two straightened out, I will answer it.

Q. Wasn't that a contract that you proposed to have with the growers?

A. Yes, but not the one Mr. Reeves has been questioning me about.

Q. Didn't that contract provide for the payment of 32 cents a box payable 12 cents, I believe, cash?

A. 20 cents at the time of the execution of the contract and the balance of 12 cents on January 15th.

[fol. 92] Q. July 15th; next ensuing, if there weren't any suits in court attacking the legality—attacking the law, or something on that order?

A. And if all growers continued to get 32 cents throughout the season.

Q. Your contract didn't provide that.

A. Yes, it did.

Q. Anyway, if those contingencies set forth in your contract, that is, if they came through, then you would have paid 32 cents a box, wouldn't you?

A. Yes, I would — had to.

Q. And did that contract contemplate a profit on your part?

A. No.

Q. I will ask you why, if you would lose money by that contract, why you would kept open?

A. Well, we have a limited capacity. We can gauge production so much a day, and I had contracts, and you can't fool with an Englishman, when you made a contract with him, you are there; and I had to produce these goods regardless of what it cost me. Now I took that out, I put the money in escrow, I took and paid the 20 cents and put the 12 cents in the bank; in order to run that way, why I did it. I wasn't a philanthropist, but it was necessary for me to turn the wheels over every day.

Q. At the time of this hearing before the Commissioner of Agriculture, at which your contract was in question, at that time you had a contract with S. & W. Co., on the Pacific Coast, did you not?

A. Yes.

Q. That's a jobber, I believe, on the Pacific Coast?

A. Yes, and a very large one.

[fol. 94] Q. Didn't that contract provide for the furnishing to that jobber by your company of 100,000 cases?

A. Yes.

Q. And didn't that contract pay you or your company enough to enable you to pay the grower 32 cents a box?

A. I have an explanation of that.

Q. Didn't you state that to the Commissioner, or at least through your attorney make that representation?

A. I wasn't there. I don't know what he said, but I will say this, that I talked to them on the telephone before I made this contract and they said "Well, we must have the goods"—you understand 32 cents is not high price for fruit—"we must have the goods, and we want it packed in January and February when the fruit is at its peak; now we must have, however, competition throughout the summer, and we can't have any cheap grapefruit going on the market, we will pay you your price; we will advance our price and pay you what you have to have to come out even—come out even, mind you, at 32 cents, but if this law which we don't believe in is held unconstitutional for any reason, then we ask you to repay to us the money.

Q. And if the law were upheld then they would pay you enough to break even.

A. Right.

Q. And in that event you wouldn't lose any money, would you?

A. We would not lose any money.

Redirect examination.

By Mr. Reeves:

Q. On that particular contract, you wouldn't lose any money, is that it?

[fol. 95] A. On that particular contract; that is the only one.

Q. Isn't it a fact that the Commissioner of Agriculture suspended your license because you attempted to operate under such a contract as that?

A. They did.

Q. And you had to shut down?

A. I did.

Q. Haven't you always maintained, that the canners, providing all canners and all growers conformed alike—haven't you always maintained that the canners can pay the growers 50 cents a box, and still make money?

A. Yes, if it could be controlled.

Mr. Reeves: The only other witness we have would be merely cumulative.

(Thereupon affidavit of John Maxey, dated the 8th day of April, 1939, is read by Mr. Grimes.)

(Thereupon T. L. Hodson affidavit is read in evidence.)

COLLOQUY

The Court: Do you make any contention that this Citrus Commission did not comply with the Act?

Mr. Reeves: Yes, we do. However, I want to bring out one fact that may help. This Act says they shall have 50% of those who own or control. We only said they didn't have 50% of the owners; we contend the word "control" is indefinite • • •.

(Hubble affidavit read in evidence by Mr. Grimes.)

(R. H. Howard and Charles F. Chastaine affidavits read in evidence.)

The Court: Mr. Bently, what do you want?

Mr. Bentley: I present on behalf of the Florida Citrus Growers, Inc., a corporation under the laws of Florida, [fol. 96] composed of between five and six thousand bona fide citrus growers this petition for intervention in the above styled cause (reading) I will say to your Honors that we will waive the right to any argument on this hearing on a temporary restraining order, but should the matter come to a final hearing at some later date on a permanent injunction we would like to be heard.

Mr. Reeves: I feel we must object to that, on behalf of the plaintiffs, because the Florida Citrus Commission is a party to this suit, and if we let one bunch of growers line up with the defendants we could go and get growers to line up with the plaintiffs, and it would be an endless proposition. We feel they are amply represented by the Commissioner of Agriculture and the Florida Citrus Commission.

Mr. Bentley: This is not an isolated group of growers, but is a growers organization . . .

The Court: I don't see any reason why he shouldn't be in this case. I don't know about the permanent injunction. That will come up and have its day at that time.

The Court: Is there any Statute of Florida which undertakes to protect or secure to the operators of the grapefruit industry, the canners, their expenses?

Mr. Reeves: No, sir.

Mr. Reeves: That is all for the plaintiffs.

(Argument. After argument adjournment is taken until 1:30 P. M.)

At 1:30 P. M. the hearing is resumed, there being present the same appearances.

(J. F. Mays affidavit is read on behalf of the defendants by Mr. Pierce.)

[fol. 97] Mr. Reaves: We submit to the Court that we be given an opportunity to submit testimony to contradict this affidavit introduced after we argued.

The Court: You can put an affidavit in on that.

Mr. Pierce: We would like an opportunity to rebut any affidavits.

The Court: Let them serve notice on you.

Judge Reaves: I suggest we withdraw those side issues.
Mr. Sutton: Then withdraw your affidavits.

(Argument.)

The Court: I don't see how we can pass on the enforcement of the Act unless it is on some constitutional questions * * *. What questions are you relying on?

G. L. Reeves: We are relying on the Commissioner of Agriculture having no authority to do what he is attempting to do.

The Court: I call your attention to the fact that you do not attack the constitutionality on the ground of want of due process.

G. L. Reeves: If there is any doubt in your mind we would like permission to amend.

The Court: There is no question to pass on the constitutionality unless it is challenged. The Interstate Commerce is challenged but the other aspect is not challenged.

G. L. Reeves: If it is not challenged I would like permission to amend the bill. If your Honor will give us two or three days to decide that.

The Court: I don't see why you can't decide on that right now. We can't pass upon the question that has been argued if it isn't in the pleadings.

[fol. 98] (Amendment to Bill of Complaint filed by plaintiffs.)

(Thereupon 5 days are given the plaintiffs to file affidavits and five days given defendants in which to answer.)

(Hearing adjourned.)

In United States District Court

Resolution of the Florida Citrus Commission—Filed April 15, 1939

Whereas, innumerable growers and shippers have appeared before the Citrus Commission and requested that the Growers Cost Guarantee Law be enforced 100 per cent against all handlers, or that the enforcement of the law be discarded, and

Whereas, the general complaint is among growers and shippers, that the law is not being equitably enforced due

to the different set-ups of the different handlers and the different schemes and devices used by canners and handlers generally to evade the law, and

Whereas, the auction sales of Duncan grapefruit indicate that the grower is not receiving cost of production and the F.O.B. sale price of fresh fruit generally indicate that the grower is not receiving cost of production, and it is generally felt that all of the canners are not paying the cost of production, and

Whereas, this leads to an intolerable position of and places a hardship upon those operators living up to the spirit of the law, and

Whereas, the Florida Supreme Court in its recent decision has clearly set forth the meaning of the law, and [fol. 99] Whereas, the Commission again states its position of wishing to back up the action of the Commissioner of Agriculture in this matter to the full extent of its power and ability, now, therefore,

Be it Resolved, that the Florida Citrus Commission hereby requests the Honorable Nathan Mayo, Commissioner of Agriculture of the State of Florida, to equitably enforce the Growers Cost Guarantee Law 100 per cent upon all handlers, shippers and canners alike, and that they request the said Mr. Mayo to inform them if, in his opinion, there is any reason why this law cannot be enforced 100 per cent upon all handlers alike.

STATE OF FLORIDA,
County of Polk:

I, T. L. Hodson, Assistant Secretary to the Florida Citrus Commission, hereby certify that the foregoing is a full, true and correct copy of a resolution unanimously adopted by the Florida Citrus Commission in meeting assembled at Lakeland, Florida on the 21st day of March, A. D., 1939.

Witness my hand and the seal of the Florida Citrus Commission at Lakeland, Florida, on this the 12th day of April, 1939.

T. L. Hodson, Assistant Secretary, Florida Citrus Commission. (Seal.)

In United States District Court

Affidavit of John A. Snively—Filed April 15, 1939

[fol. 100] Before me the undersigned Notary Public, in and for the State of Florida at Large, personally appeared, John A. Snively, who being first duly sworn, deposes and says: That he is President of Polk Packing Association, a cooperative packing, canning and marketing association, under the laws of the State of Florida; that said Polk Packing Association owns and operates a canning plant, and cans for its members, grapefruit juice; that during the period from January 19th to March 23, 1939, said Polk Packing Association canned for its grower members between 60,000 and 70,000 cases of grapefruit juice; that said Polk Packing Association endeavored to sell said products on the market at a price that would yield its grower members thirty-two cents per box on the tree; that said Association was unable to sell any of said grapefruit juice at a price which would yield the grower thirty-two cents per box, on the tree, and that said products were stored and held until about the 24th day of March, 1939; that prior to the 24th day of March, 1939, other cooperative associations and grower owned canning companies in the State of Florida, quoted a lower price for grapefruit juice than the Polk Packing Association had quoted, and actually sold the same at such lower quotation; that the said Polk Packing Association thereupon sold approximately 50,000 cases of said grapefruit juice, at a price which would yield the grower a [fol. 101] price less than thirty-two cents per box, on the tree.

Deponent further says that the price at which grapefruit juice is selling on the market today, would not yield the grower thirty-two cents per box, on the tree.

Deponent further says that in order to pay the grower thirty-two cents per box for grapefruit on the tree, on the present market, and on the market as it has been for the past several months, the packer would have to take a loss.

Deponent further says that the Polk Packing Association is cooperatively owned and operated, and that if it has to pay the grower thirty-two cents per box for the grapefruit canned by it, and sold at a price which would not yield thirty-two cents per box, then said packing association will

have to take the loss in operation, and that while the grower may receive thirtytwo cents per box for his grapefruit, he will take a loss in the operation of said canning plant of an amount equal to the difference between the market price of said grapefruit and thirty-two cents per box.

Jno. A. Snively.

Sworn to and subscribed before me on this the 14th day of April, A. D. 1939.

Margie D. Spann (Englord), Notary Public, State of Florida at Large. (Seal.)

My Commission Expires Aug. 29, 1939.

[fol. 102] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF RALPH POLK, SR.—Filed April 15, 1939

Before me, the undersigned authority, personally appeared Ralph Polk, who being by me first duly sworn, upon oath, deposes and says that he is President of The Polk Company, a corporation organized and existing under the laws of the State of Indiana, and authorized to do business in the State of Florida, which corporation is actively engaged in the business of canning citrus fruit and citrus fruit juices.

Affiant further says that he has been engaged in the canning of citrus fruit and citrus fruit juices in the State of Florida for the past eighteen (18) years.

Affiant further says that he has been shown copy of Affidavit of J. F. Mays filed in this cause on or about the 10th day of April, 1939 and affiant denies that Growers Cost and Guarantee Law from January 19, 1939 to March 23, 1939 [fol. 103] was enforced with respect to all cooperative associations in the State of Florida; affiant further denies that there was only one cooperative canning plant during the period of time above stated and says that, of his own knowledge, he knows that there was more than one cooperative plant operating during said period of time.

With reference to fresh fruit cooperative shippers, this affiant says that he has no actual knowledge as to the enforcement of said law other than that he knows from the auction prices showing the amount that the fresh fruit brought on auction markets in the East, that there was not

a return to the growers of 32¢ per field box on the tree for the fruit sold through said auction markets.

Affiant further says that from his experience in the canning business and his knowledge of the manner in which canning business is carried on in the State of Florida, it is his belief that it is impossible to determine, at this time, whether any canning corporation- in the State of Florida have made any profits in their business this season other than that affiant knows that at the current prices quoted for canned grapefruit and canned grapefruit juice, it is his honest belief that said prices will not return to the growers 32¢ per field box.

[fol. 104] With reference to the provision of the Affidavit of J. F. Mays that several canning corporations in the State of Florida have consistently paid 32¢ per field box and have made a profit in their business, this affiant says that if any canning plant has completed its operations for the season and has sold and disposed of its canned products, it would then be in a position to know whether it had made a profit or a loss during the season. That affiant is informed and believes that none of the independent corporations in the State of Florida have yet completed their season and disposed of their finished products, so that it can be determined whether they have made any profits.

Affiant further says that he knows of his own knowledge that many growers in the State of Florida have delivered their grapefruit to cooperatives, have received net returns for less than 32¢ per box and that the same is satisfactory to said growers and that it is all they expect to receive.

Affiant says that he knows that one or more cooperative canning plants in the State of Florida operated during the period of time from January 19, 1939 until March 23, 1939 and are still operating and have canned large volumes of grapefruit and grapefruit juice; that there are now held and stored by one or more cooperatives large volumes of canned grapefruit and grapefruit juices, for which the grower has not been paid the 32¢ per field box and which canned products are in competition to the products of the plaintiffs in this cause.

Affiant further says that when the Growers Cost Guarantee Law became effective on January 19, 1939, The Polk [fol. 105] Company was forced to cease operation because of its inability to pay to the grower the 32¢ per field box on the tree under the existing market conditions; that The

Polk Company prior to that date had been operating and had been employing 1250 employees with a weekly payroll of approximately $15,000.00; that in order to meet its requirements to its buyers, the said company was forced to purchase canned grapefruit products in the State of Florida and that it did purchase large volumes of the canned grapefruit products from cooperatives and grower owned canning plants at prices which affiant knows was insufficient to return to the grower the said cost of production as fixed by the citrus commission; that affiant knows that a large part of the canned products purchased by The Polk Company during said period of time were actually canned between January 19, 1939 and March 23, 1939 for the reason that some of the cooperative and grower owned canning plants from whom The Polk Company purchased its requirements did not begin the canning of grapefruit products until the independents had been forced to cease operations by reason of said Growers Cost Guarantee Law.

Ralph Polk, Sr.

Sworn to and subscribed before me this 13th day of April A. D., 1939.

Wm. Smith. (Seal)

[fol. 106] IN UNITED STATES DISTRICT COURT

PETITION TO INTERVENE OF FLORIDA CITRUS GROWERS, INC.—Filed April 10, 1939

The Florida Citrus Growers, Inc., a corporation under the laws of Florida, composed of between five and six thousand bona fide citrus growers, present this its petition to intervene in the above styled cause.

The Florida Citrus Growers, Inc., would respectfully show unto the Court:

1. That the growers of grapefruit are the real parties in interest in this litigation and are proper parties in this cause.

2. That the Grower's Cost Guarantee Law attacked in this action was brought into being and its provisions invoked upon the petition of the growers of Florida.

3. That if those who grow grapefruit cannot get back at least the cost of production, one of the basic industries of Florida will be destroyed.

4. That any benefits from said Grower's Cost Guarantee Law will inure to the growers and to strike down said act will cause irreparable injury to this large group of Florida citizens.

Wherefore, Florida Citrus Growers, Inc., petitions this Court for permission to intervene herein as a party defendant with the right to be heard in behalf of the validity [fol. 107] of the law here under attack.

Ed R. Bentley, Attorney for Florida Citrus Growers, Inc.

STIPULATIONS RE TIME FOR FILING DEFENDANTS' PLEADINGS

On April 15, 1939, Stipulation of respective counsel, dated April 11, 1939, giving defendants ten days from that date within which to file pleadings, was filed.

On the 24th day of April, 1939, Stipulation of respective counsel was filed, giving defendants until May 15, 1939, within which to file pleadings.

On the 17th day of May, 1939, Stipulation of respective counsel was filed, giving defendants until May 17, 1939, within which to file pleadings.

IN UNITED STATES DISTRICT COURT

ORDER GRANTING MOTION FOR INTERLOCUTORY INJUNCTION—Filed April 28, 1939

This cause coming on to be heard before the undersigned Judges on the Motion for an Interlocutory Injunction, and after hearing the evidence and argument of counsel and for the reasons to be expressed in an opinion to be filed later, It Is Considered, Ordered and Decreed by the Court that the Motion for Interlocutory Injunction be and the same is hereby granted, and the restraining order hereto- [fol. 108] fore issued by the District Judge is continued in

full force and effect until the final hearing in this case or until the further order of the Court.

Done and Ordered, this the 28th day of April, 1939.

Leon McCord, Judge, United States Circuit Court of Appeals. Robert T. Ervin, United States Dis-District Judge. Alexander Akerman, United States District Judge.

IN UNITED STATES DISTRICT COURT

OPINION—Filed May 3, 1939

This case was argued and submitted on April 10th, 1939, on the bill and testimony.

The defendants appeared and though they had not filed answers, argued the case and requested the Court to pass on all questions presented, and especially on the constitutionality of the Act involved.

The Act is found in Florida Acts of 1935, page —.

Grower's Cost Guarantee Law.

An Act relating to citrus fruit: Prescribing conditions and limitations upon the sale, marketing and processing thereof, and the effect of contracts of sale and of marketing and processing agreements.

[fol. 109] Whereas, it is found by the Legislature and hereby declared that the production and distribution of citrus fruit is a paramount industry in Florida upon which the prosperity of the State in a large measure depends; that such fruit and the juices thereof have become and are generally used in great and rapidly increasing quantities, both voluntarily and upon advice of physicians, by people of all classes, ages and conditions; that it is necessary for the reasonable comfort, welfare and health of the people and in order to build up their strength and vigor that an adequate and dependable supply of high grade citrus fruit in the State of Florida is therefore hereby declared to be a business affecting the public health and interest, that unfair, unjust, destructive, demoralizing, and uneconomic trade practices have been and are continuing to be carried on in the sale and distribution of citrus fruit in this state to the extent that such fruit has been and is continuing to sell in many cases at prices below the cost of production

and the constant, dependable and adequate supply of such fruit for sale and consumption is thereby so seriously imperiled as to threaten the break down of the industry; that the present acute economic condition in Florida is in part the consequence of a severe and increasing disparity between the prices of citrus fruit and other commodities; that it is both expedient and necessary to build up the quality and reputation of Florida's citrus fruit in the market and to stabilize the Florida citrus industry and to protect the public and the growers against fraud, deception, and financial loss through further continuation of unscrupulous practices and haphazard methods in connection with the marketing of citrus fruits, and to that end, to assure the grower returns at least equal to the cost of production of high grade citrus fruit.

Therefore, in the exercise of the police power of the State, for the purpose of protecting and promoting the public health and general welfare,

. . . . . .

Section 3. The Commissioner of Agriculture in his discretion and by and with the consent and advice of the Governor shall have the power to declare the existence of a State Emergency in the Citrus Industry, and upon petition or petitions signed by persons, firms, corporations, or associations, owning or controlling 50% or more of the producing acreage of citrus fruit, requesting such action, being filed with the Citrus Commission, such percentage to be based upon the survey heretofore made by the Federal Emergency Relief Administration and supplemented by such further surveys as the Citrus Commission from time to time may make, and after the Citrus Commission shall have procured from the producers, shippers, or handlers of citrus fruit, not subject to the provisions of this Act, binding agreements to conform thereto and abide by its terms, the Florida Citrus Commission shall determine and [fol. 110] record in permanent form annually the average reasonable cost per standard packed box of producing citrus fruit and every contract, agreement, plan or arrangement with the grower by or under which his citrus fruit shall be bought, marketed, or processed shall be held to require that the person, firm, corporation, or association buying, marketing or processing said citrus fruit shall in any event pay

the grower said cost of production, to be ascertained by multiplying the said cost per standard packed box as shown by the record of the Commission current at the time the contract, agreement, plan of arrangement with the grower shall be made, by the number of packed boxes so bought, marketed and processed during the season or under the particular contract, agreement, plan or arrangement if for less than a marketing season. Any contract, plan, scheme or device whereby it shall be attempted to preclude the grower from recovering such cost of production shall to that extent be held to be unlawful and against the public policy of this State, but in all other respects and particulars contracts of sale, marketing and processing shall be valid and binding and the terms thereof shall measure the rights of the respective parties.

We are not concerned with Sections one and two, but the provisions of Section three raise all the questions with which we are concerned.

Taking up these in the order of their importance, we consider whether it violates the due process clause of the Fourteenth Amendment. We are aware of the fact that many of the later decisions on the due process clause have gone far beyond the earlier ones.

The latest authoritative decision in which this question is discussed is West Coast Hotel Co. vs. Parrish, 300 U. S. 491, which says:

"The Constitution does not speak of freedom of contract. It speaks of liberty and prohibits the deprivation of liberty without due process of law. In prohibiting that deprivation the Constitution does not recognize an absolute and uncontrollable liberty. Liberty in each of its phases has its history and connotation. But the liberty safeguard is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, [fol. 111] morals and welfare of the people. Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process.

This essential limitation of liberty in general governs freedom of contract in particular. More than twenty-five years ago we set forth the applicable principle in these

words, after referring to the cases where the liberty guaranteed by the Fourteenth Amendment had been broadly described.

But it was recognized in the cases cited, as in many others, that freedom of contract is a qualified and not an absolute right. There is no absolute freedom to do as one wills or to contract as one chooses. The guaranty of liberty does not withdraw from legislative supervision that wide department of activity which consists of the making of contracts, or deny to government the power to provide restrictive safeguards. Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community." Chicago B. & Q. R. Co. vs. McGuire, 210 U. S. 549-567.

The definition of due process here given contains two positive requirements. First: the regulation must be as applied to the Citrus business, reasonable. To be reasonable it must not be arbitrary, nor should it be unjust to any of those whom it undertakes to regulate. Second: it must have been adopted in the interests of the community. In other words, the community or the public must have an interest in or be concerned with such regulation.

The protection of the public should be the prime purpose of the regulation and not the business to be regulated.

Take the citrus industry as a whole and it is manifest that it is as much dependent on the canners as upon the growers, for we all know that the fruit in its natural state [fol. 112] cannot be stored for future sale as grain is done, but that the juices when processed and canned can be. So if the crop is raised too large to be sold as gathered, the price of the fruit will be greatly reduced and the loss much greater than if the excess fruit is canned and the juices stored for future sale. The canner who processes the fruit and preserves the juice plays an important part in buying the excess fruit and processing it. The Act recognizes the canners in the reference to "the fruit and the juices thereof", and to processing the same.

The testimony showed that this year's crop is large, and the Citrus Commission fixed the cost to the grower of raising the crop of grapefruit at thirty-two cents a box, and that the canner could not pay that price and the cost of processing it and sell the juice without suffering a loss.

It further showed that the canners had established businesses of years standing with a large investment, employing several thousand employees.

That they had made contracts for sale of juice for future delivery and that they were forced to cancel when the cost price was fixed by the Commission.

The effect of this was that the canners were penalized for the benefit of the growers if the canners continued business.

The testimony also showed that many of the growers had organized cooperative corporations to process their grapefruit, the cooperative did not pay cash for their fruit to these growers, but credited them with the amount of the price of the fruit and were not expected to pay for it unless the market prices enabled them to pay it, and the Commissioner did not enforce payment while requiring payment of the regular canners.

[fol. 113] This certainly was discrimination against the canners, and the Commissioner must have construed the Act so, as to authorize him to do this.

The Act makes a sale for less than the price fixed unlawful. Suppose the price fixed by supply and demand is less than that fixed by the Commission, a sale by a grower for any less price would be unlawful.

If his actual cost of raising his crop were ten thousand dollars, he could not sell it for eight thousand dollars and so minimize his loss, but would be compelled to let it spoil on the trees and so lose the whole crop.

Is not this alone sufficient to make the Act arbitrary and prejudicial? We find the Act unconstitutional.

There is one other feature of the Act which may not render it violative of the Constitution, but certainly requires enjoining the Commissioner from enforcing the fixed price.

The Act provides that after the Citrus Commission shall have procured from producers, shippers, or handlers of citrus fruit, not subject to the provisions of this Act, binding agreements to conform thereto and abide by its terms, the Florida Citrus Commission shall determine and record in permanent form annually the annual reasonable cost per standard box, of producing citrus fruit, etc.

There is no proof in the record of any such consent and agreement having been secured by the Commission.

We therefore conclude that the injunction should be granted.

Leon McCord, U. S. Cir. Judge; Robert T. Ervin, Alexander Akerman, Judge.

April 13, 1939.

[fol. 114] IN UNITED STATES DISTRICT COURT

ANSWER—Filed May 17, 1939

Nathan Mayo, as Commissioner of Agriculture of the State of Florida, Defendant herein, and Florida Citrus Commission, a body corporate under the laws of Florida, Intervening Defendant, for joint and several answer to the complaint, say:

First Defense

The complaint fails to state a claim against these defendants or either of them, upon which relief can be granted.

Second Defense

Plaintiffs are not in position to challenge the constitutionality of Chapter 16862, Laws of Florida, Acts of 1935, nor the constitutionality of the resolution of the Florida Citrus Commission promulgated thereunder on January 16, 1939, for the reason that plaintiffs and all other independent canners of citrus fruits and citrus juices are affected alike by said Act and by said resolution, and are not discriminated against.

Third Defense

Chapter 16862, Laws of Florida, Acts of 1935, as well as the resolution of the Florida Citrus Commission promul- [fol. 115] gated pursuant thereto, contemplates and requires by its terms a uniform enforcement thereof as to all handlers of citrus fruit, and therefore if there is any variation in the manner of enforcement of said Act as between plaintiffs and the so-called cooperative organizations, such fact cannot be made the basis of a claim of unconstitutionality of the statute, because to the extent of the enforcement or lack thereof as against the so-called cooperatives, the en-

forcement officials would be acting in their private capacity, and not as public officials in the enforcement of the Act.

Fourth Defense

Defendants admit the allegations contained in paragraphs I, II, XIII (erroneously designated as paragraph XXII in the complaint), XIV, and XV of the complaint. Defendants admit the allegations of paragraph IV of the complaint to the effect that the canning of grapefruit and grapefruit juice has developed into one of the principal industries of the State of Florida, and that other citrus juices are also canned in said State, but are otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the remainder of said paragraph of the complaint. Defendants admit the allegations of paragraph V of the complaint to the effect that canned grapefruit and grapefruit juice packed in the State of Florida are widely distributed in interstate commerce, but are without knowledge or information sufficient [fol. 116] to form a belief as to the truth of the remaining allegations of said paragraph. Defendants admit the allegations of paragraph VII of the complaint to the effect that grapefruit is produced in the State of Texas and the territory of Puerto Rico, but are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph of the complaint. Defendants admit the allegations of Paragraph XII of the complaint to the effect that the Commissioner of Agriculture of Florida has warned plaintiffs that if they operate their canning plants and do not pay the producer at least 32¢ per field box for grapefruit, the licenses of plaintiffs will be revoked, but are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph of the complaint. Defendants admit the allegations contained in paragraph XVI of the complaint, except that defendants deny that the Florida Citrus Commission did not comply with the statute as alleged in said paragraph, as to which defendants aver the truth to be that said Commission did comply with the statute in the respect mentioned. Defendants admit the allegations contained in paragraph XVII of the complaint, except that defendants deny that the Florida Citrus Commission failed to comply with

the provisions of the statute as alleged in said paragraph, as to which these defendants aver the truth to be that said Commission did comply with the statute in the respect mentioned. Defendants admit the allegations contained in paragraph XVIII of the complaint, except that defendants [fol. 117] deny that the Florida Citrus Commission had no power, authority, or jurisdiction to issue the said regulation, as alleged in said paragraph, and defendants aver, in further support of this denial, the fact to be and that the Florida Citrus Commission so found, that all citrus fruit dealers handling grapefruit grown in the State of Florida are subject to the provisions of said Act. Defendants admit the allegations contained in paragraph XX of the complaint, but aver in addition thereto that said contract therein mentioned did not guarantee to the growers at least 32¢ per field box for grapefruit, nor in fact guarantee to the growers any amount therefor, and that the Supreme Court of Florida so found and held. Defendants admit the allegations contained in paragraph XXIII of the complaint, except that defendants deny that the Commissioner of Agriculture of Florida is without authority to revoke the licenses of plaintiffs or any of them for their failure to comply with the provisions of the Growers' Cost Guarantee Act or the regulation promulgated thereunder, and deny that such revocation will be illegal, improper, and without authority. Defendants admit the allegations of paragraph XXIV of the complaint, except that defendants deny that such revocation of licenses of plaintiffs or any of them will be depriving such plaintiffs of their property without due process of law, or will take away from such plaintiffs their right to transact lawful business in the State of Florida, or that the loss and damage of such plaintiffs will be irreparable. Defendants are without knowledge or information sufficient to form a belief as to the truth of [fol. 118] the allegations contained in paragraph III, IV-A, VI, VIII, and XI of the complaint. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph IX of the complaint, except that defendants deny that because of the statute and regulation mentioned therein, it has been impossible for plaintiffs to operate their factories and pay the grower the sum of 32¢ per field box for grapefruit. Defendants are without knowledge or information

sufficient to form a belief as to the truth of the allegations contained in paragraph X of the complaint, except that defendants deny that unless injunction is granted as prayed for, plaintiffs will be unable to operate their canning factories the remaining portion of this season, and that the loss to each of said plaintiffs will exceed the sum of Three Thousand ($3000.00) Dollars, as alleged therein. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph XX-A of the complaint, except that defendants deny that the enforcement of said Act will impose a burden on or directly interfere with interstate commerce, or that if said law and the regulation thereunder are held valid, the plaintiffs will be unable to operate their canning plants, and deny that the effect of said Act will be to attempt to fix the sale prices of grapefruit and grapefruit juice canned in the State of Florida. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph XXV of the complaint, except that defendants deny that, because [fol. 119] of the promulgation of the regulation, Florida Grapefruit Canning Company has been unable to accept the said 60,000 boxes of grapefruit at the price set forth in said contract, or that said plaintiff is unable to pay 32¢ per field box for said grapefruit, and process the same and sell it to the consumer under its contract to the consumer. Defendants deny each and every other allegation contained in the complaint. Defendants deny each and every of the allegations contained in the amendment to the complaint made and filed by the plaintiffs, by leave of court, on April 10, 1939. Defendants further answering say that the Commissioner of Agriculture has at all times been of the opinion and has contended that said Act and the resolution of the Citrus Commission promulgated thereunder, apply to all canners and handlers, of grapefruit, who buy, market, or process said grapefruit for or from the producer, whether such canner or handler is an individual or a corporation or a cooperative association, and has endeavored to enforce said Act and said resolution in conformity therewith.

Signed George Couper Gibbs, Attorney General of Florida, Address: State Capitol, Tallahassee, Florida. Signed: H. E. Carter, Assistant Attorney

General of Florida, Address: State Capitol, Tallahassee, Florida. Signed Wm. C. Pierce, Address: 404½ Zack Street, Tampa, Florida. Signed: O. [fol. 120] K. Reaves, Mabry, Reaves, Carlton & White, By O. K. Reaves, Address: First National Bank Building, Tampa, Florida, Attorneys for Defendant, Nathan Mayo, as Commissioner of Agriculture of the State of Florida. Signed E. Glenn Grimes, Address: Bradenton, Florida, Attorney for Defendant, Florida Citrus Commission, a Body Corporate.

Acceptance of Service

I hereby accept service of copy of the foregoing Answer on behalf of plaintiffs on this 15th day of May, A. D. 1939.

Signed: G. L. Reeves, Address: Stovall Professional Building, Tampa, Florida, Attorney for Plaintiffs.

In United States District Court

Petition of Florida Citrus Commission for Leave to Intervene—Filed May 17, 1939

[fol. 121] The Florida Citrus Commission, a corporate body created by and under Chapter 16854, Laws of Florida, Acts of 1935, as amended by Chapter 17775, Laws of Florida, Acts of 1937, whose principal office is Lakeland, Florida, petitions this Honorable Court to intervene in the above entitled cause as party defendant, upon the grounds that it is a proper party defendant herein.

The Act known as Chapter 16862, Laws of Florida, Acts of 1935, questioned in the Bill of Complaint herein, is one of a series of acts passed for the regulation of the citrus industry in Florida, and under which the Florida Citrus Commission has certain duties to perform, namely, fixing the cost of production, the proper exercise of which has been questioned by the complainant in its Bill of Complaint.

Under the series of citrus laws in Florida now in question, the rule and regulation making power is in the Florida Citrus Commission and these rules and regulations have

been directly challenged by the plaintiffs in their Bill of Complaint.

Wherefore, it appears necessary for the Florida Citrus Commission to defend same.

Wherefore, your petitioner prays that it may be made a party defendant to this cause.

Florida Citrus Commission, By E. Glenn Grimes, Attorney, Bradenton, Florida.

[fol. 122] IN UNITED STATES DISTRICT COURT

ORDER GRANTING PETITION OF FLORIDA CITRUS COMMISSION TO INTERVENE—Filed May 17, 1939

The petition of the Florida Citrus Commission to be made a party defendant in this action, having come on this day to be heard and the Court being advised in the premises,

It is Hereby Ordered, Adjudged and Decreed that the Florida Citrus Commission be joined as party defendant in the above entitled cause.

Done and Ordered in Chambers at Orlando, Florida, this the 28th day of March, A. D. 1939.

Alexander Akerman, Judge.

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed July 7, 1939

Come now Nathan Mayo, as Commissioner of Agriculture of the State of Florida, and Florida Citrus Commission, a [fol. 123] body corporate, defendants herein, and state that on the 28th day of April, 1939, motion of plaintiffs for an interlocutory injunction was granted, and by opinion dated April 13, 1939 and filed with the Clerk of this Court on May 3, 1939 the statute involved in this cause, towit, Chapter 16,862, Laws of Florida, Acts of 1935, and the resolution of the Florida Citrus Commission promulgated thereunder, were declared invalid and unconstitutional, and the defendants feeling aggrieved at said ruling of said District Court in granting said interlocutory injunction and declaring said State law and said resolution unconstitutional, pray that they may be allowed to appeal to the Supreme Court of the United States for a reversal of said order, and that a transcript of the record in this cause, duly authenticated,

may be sent to the said Supreme Court of the United States.

Petitioners, upon the presentation of this petition, respectfully present a separate typewritten statement particularly disclosing the basis upon which it is contended that the Supreme Court of the United States has jurisdiction upon appeal to review the order and judgment in question, which statement also includes a showing of the matters in which it is claimed that this Court has abused its discretion in granting the interlocutory injunction. This petition is also accompanied by an assignment of errors setting out separately and particularly each error asserted.

George Couper Gibbs, Attorney General of Florida;
H. E. Carter, Asst. Attorney General of Florida;
Wm. C. Pierce, O. K. Reaves, E. Glenn Grimes, Attorneys for Defendants.

Presented July 3rd, 1939.

Alexander Akerman, Judge.

[fol. 124] IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed July 7, 1939

Come now Nathan Mayo, as Commissioner of Agriculture of the State of Florida, and Florida Citrus Commission, a body corporate, defendants herein, and aver that in the record, proceedings and order herein there is manifest error, and against the just rights of these defendants in this, to wit:

1. That the Court committed reversible error against defendants in granting the motion of plaintiffs herein for an interlocutory injunction.

2. That the Court committed reversible error against these defendants in holding and adjudging unconstitutional and invalid, Chapter 16,862, Laws of Florida, Acts of 1935.

3. The Court committed reversible error against these defendants in holding and adjudging Section 3 of Chapter 16,862, Laws of Florida, Acts of 1935, unconstitutional and invalid.

4. That the Court committed reversible error against these defendants in holding and adjudging unconstitutional

and invalid the resolution and order of the Florida Citrus Commission dated January 16, A. D. 1939, promulgated pursuant to Chapter 16,862, Laws of Florida, Acts of 1935.

[fol. 125] 5. That the Court committed reversible error against these defendants in holding and adjudging that said Chapter 16,862, and particularly Section 3 thereof, violates the due process clause of the Federal Constitution.

6. That the Court committed reversible error against these defendants in holding that said Chapter 16,862 was arbitrary and unreasonable under the Federal Constitution.

7. That the Court committed reversible error against these defendants in holding that said Chapter 16,862 was discriminatory as against plaintiffs under the Federal Constitution.

8. That the Court committed reversible error against these defendants in finding and adjudging that the Commissioner of Agriculture of Florida must have construed the Act involved herein so as to authorize him to discriminate against the plaintiffs in violation of the Federal Constitution.

9. That the Court committed reversible error against these defendants in impliedly holding and adjudging that plaintiffs had shown the requisite jurisdictional amount of $3,000.00, exclusive of interest and costs, to be involved in this cause.

10. The Court committed reversible error against these defendants in finding as a fact that the cooperative corporations did not pay cash for their fruit to the growers, but credited the grower with the amount of the price of the fruit and that the cooperatives were not expected to pay for the fruit unless the market prices enabled them to pay it.

11. That the Court committed reversible error in finding as a fact from the evidence that the Commissioner of Agri-[fol. 126] culture of Florida did not enforce payment by the cooperative corporations to the growers for their fruit, but did require payment by the plaintiffs to their growers for their fruit.

12. That the Court committed reversible error in holding that the effect of said Chapter 16,862 and the resolution of the Florida Citrus Commission promulgated thereunder,

was that plaintiffs were penalized for the benefit of the growers if plaintiffs continued business.

13. That the Court committed reversible error in finding as a fact from the testimony that the citrus industry as a whole was as much dependent on the canners as upon the growers.

14. That the Court committed reversible error in finding as a fact from the testimony that plaintiffs had made contracts for the sale of juice for future delivery which they were forced to cancel when the cost price was fixed by the Commission.

15. That the Court committed reversible error in holding and adjudging said Chapter 16,862, arbitrary, prejudicial and unconstitutional because of a supposed hypothetical loss to the grower of citrus fruits not based upon any testimony, when this case was brought and heard solely at the instance of citrus canners and not at the instance of any grower.

16. That the Court committed reversible error in finding that the Florida Citrus Commission did not comply with the provisions of said Chapter 16,862 in procuring from producers, shippers or handlers of citrus fruit, not subject to the provisions of the Act, binding agreements to con- [fol. 127] form thereto and abide by its terms, prior to the fixing of the annual cost of production.

17. That the Court committed reversible error in holding and adjudging that the interlocutory injunction must be granted because of the absence of proof that the Florida Citrus Commission had complied with said Chapter 16,862 in procuring from producers, shippers or handlers of citrus fruit not subject to the provisions of the Act, binding agreements to conform thereto and abide by its terms, thus and thereby holding as a matter of law that the burden was upon those who enforce the law to show that the provisions of the Act had been complied with, rather than the burden being upon those who complain of the law, to show that such provisions had not been complied with.

18. That the Court committed reversible error in impliedly holding and adjudging that plaintiffs were in a position to challenge the constitutionality of said Chapter 16,862, and the constitutionality of the resolution of the Flor-

ida Citrus Commission promulgated thereunder, although it appeared by the record before the Court that all independent canners of citrus fruits and others similarly situated as plaintiffs were treated alike in the Act and that the same was enforced equally as between plaintiffs and others similarly situated.

Wherefore said defendants named above, respectfully pray the Supreme Court of the United States that the judgment or order granting the motion for interlocutory injunction may be reversed.

George Couper Gibbs, Attorney General of Florida; H. E. Carter, Asst. Attorney General of Florida; [fols. 128-209] Wm. C. Pierce, O. K. Reaves, E. Glenn Grimes, Attorneys for Defendants.

Presented July 3rd 1939. Alexander Akerman, Judge.

[fol. 210] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL—Filed July 7, 1939

This cause coming on this day before the Court on the petition of Nathan Mayo as Commissioner of Agriculture [fols. 211-212] of the State of Florida, and Florida Citrus Commission, a body corporate, defendants in the above entitled cause, praying an appeal to the Supreme Court of the United States for a reversal of the order and judgment herein granting the motion for interlocutory injunction, and that duly certified copy of the record in said cause be transmitted to the Clerk of the Supreme Court of the United States, and the Court having heard and considered said motion, together with defendants' statement particularly disclosing the basis upon which it is contended that said Supreme Court has jurisdiction upon appeal to review the judgment and order in question, together with a showing of the matters in which it is claimed that this Court has abused its discretion in granting the interlocutory injunction; it is therefore by the Court

Ordered and Adjudged that defendants herein, Nathan Mayo, as Commissioner of Agriculture of the State of Florida, and Florida Citrus Commission, a body corporate, be and they are hereby allowed an appeal from the judgment

and order of this Court granting the motion for interlocutory injunction, and that a duly certified copy of the record of said cause be transmitted to the Clerk of the Supreme Court so that he shall have the same in said Court within thirty days of this date. It is further

Ordered that security for costs on appeal be fixed in the sum of $250.00.

This the 3rd day of July, A. D. 1939.

Alexander Akerman, District Judge.

[fols. 213-218] BOND ON APPEAL

On the 7th day of July, 1939, Cost Bond on appeal in the amount of $1,250.00 was presented and approved as required by law and filed with the Clerk.

CITATION

On the 3rd day of July, 1939, Citation was signed and issued by Honorable Alexander Akerman, District Judge, which original Citation accompanies this transcript of record and is submitted to the Clerk of the United States Supreme Court.

[fol. 219] IN UNITED STATES DISTRICT COURT

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed July 7, 1939

To the Clerk of the Above Stated District Court:

You will please prepare and certify the transcript of record in the above entitled cause, for the use of the Supreme Court of the United States, pursuant to the appeal heretofore allowed in this case, and observe in preparation of same the following directions:

1. Copy the complaint and exhibits attached thereto, filed March 23, 1939.

2. Copy the temporary restraining order filed March 23, 1939.

3. Recite the filing and approval of injunction bond, filed March 24, 1939.

4. Copy the notice of application for temporary injunction, filed April 10, 1939.

5. Copy the order designating hearing on application for temporary injunction, filed April 10, 1939.

6. Copy the amendment to complaint filed April 10, 1939.

7. Copy certificate of Chas. F. Chastain and exhibits attached thereto, filed April 10, 1939.

[fol. 220] 8. Copy affidavit of J. F. Mays, filed April 10, 1939.

9. Copy additional affidavit of Chas. Chastain filed April 10, 1939.

10. Copy affidavit of John Maxcy, filed April 10, 1939.

11. Copy affidavit of T. L. Hodson, filed April 10, 1939.

12. Copy affidavit of W. W. Hubbell, filed April 10, 1939.

13. Copy affidavit of R. H. Howard, filed April 10, 1939.

14. Copy report of testimony taken April 10, 1939, before 3 Judge Court, filed July 7, 1939.

15. Copy the resolution of Florida Citrus Commission, copy of which was filed April 15, 1939.

16. Copy the affidavit of John A. Snively, filed April 15, 1939.

17. Copy affidavit of Ralph Polk, Sr., filed April 15, 1939.

18. Copy the petition to intervene of Florida Citrus Growers, Inc., filed April 10, 1939.

19. Recite Stipulation of Counsel giving defendants ten days from April 15, 1939, to file pleadings, filed April 15, 1939.

20. Recite Stipulation of Counsel giving defendants until May 15, 1939, to file pleadings, filed April 24, 1939.

21. Recite Stipulation of Counsel allowing defendants until May 17, 1939 to file pleadings, filed May 17, 1939.

[fol. 221] 22. Copy the order granting motion for interlocutory injunction filed April 28, 1939.

23. Copy opinion of three-Judge Court filed May 3, 1939.

24. Copy the Answer of defendants filed May 17, 1939.

25. Copy Petition of Florida Citrus Commission for leave to intervene, filed May 17, 1939.

26. Copy the Order granting leave to intervene to Florida Citrus Commission, signed March 28, 1939, but filed May 17, 1939.

27. Copy the petition for allowance of appeal filed July 7, 1939.

28. Copy the Assignment of Errors filed July 7, 1939.

29. Copy the Statement sustaining jurisdiction, filed July 7, 1939.

30. Copy the Order allowing appeal signed July 3, 1939, but filed July 7, 1939.

31. Recite filing of Cost Bond and approval thereof as required by law, filed July 7, 1939.

32. Recite the issuance of citation on July 3, 1939, and notation that the same accompanies transcript of record.

33. Copy notice and acknowledgment of service on plaintiffs' counsel of all appeal papers, filed July 7, 1939.

34. If plaintiffs, or any of them, under Paragraph 3, of Rule 12, of the Supreme Court rules, should file a typewritten statement or statements disclosing any matter or ground making against the jurisdiction of the Supreme [fols. 222-223] Court, you will please copy the same.

35. If plaintiffs, or any of them, file with you a praecipe indicating additional portions of the record desired to be included or recited, you will please observe and follow the directions contained therein in the making up of said transcript, and you will also please copy such praecipe.

36. Copy this praecipe for making up the record.

37. Attach to said Transcript of Record your certificate.

Wm. C. Pierce, Of Counsel for Defendants.

This is to acknowledge receipt of copy of the foregoing praecipe and acceptance of service thereof on this 7th day of July, 1939.

G. L. Reeves, Of Counsel for Plaintiffs.

Clerk's certificate to foregoing transcript omitted in printing.

[fols. 224-225] Citation, in usual form, showing service on G. L. Reeves, omitted in printing.

[fol. 226] In Supreme Court of the United States

Statement of Points to Be Relied Upon and Designation as to Printing Record—Filed Aug. 7, 1939

Pursuant to Rule 13, Paragraph 9 of the Supreme Court rules as amended, the Appellants state that they intend to rely on all the points set out in their Assignment of Errors.

The Appellants deem the entire record, as filed in the above entitled cause, necessary for the consideration of the cause and of the points relied upon.

George Couper Gibbs, Attorney General of Florida;
H. E. Carter, Asst. Attorney General of Florida;
[fol. 227] Wm. C. Pierce, O. K. Reaves, E. Glenn Grimes, Counsel for Appellants.

On behalf of Appellees I herewith acknowledge service and copy of the foregoing statement and designation, on this 26th day of July, 1939.

G. L. Reeves, Of Counsel for Appellees.

[fol. 228] [File endorsement omitted.]

Endorsed on cover: File No. 43,677. S. Florida, D. C. U. S. Term No. 270. Nathan Mayo, as Commissioner of Agriculture of the State of Florida, et al., Appellants, vs. Lakeland Highlands Canning Co., Inc., The Polk Company and Roberts Brothers, Inc., et al. Filed August 7, 1939. Term No. 270, O. T., 1939.